



# Uttlesford District Council

Chief Executive: Dawn French

## Licensing and Environmental Health Committee

**Date:** Tuesday, 29th January, 2019

**Time:** 7.30 pm

**Venue:** Committee Room - Council Offices, London Road, Saffron Walden,  
Essex CB11 4ER

**Chairman:** Councillor R Chambers

**Members:** Councillors G Barker, J Davey, M Foley, A Gerard, T Goddard (Vice-Chair), J Gordon, E Hicks and S Morris

**Substitutes:** Councillors H Asker, J Freeman, R Freeman, D Jones and  
J Loughlin

### Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting.

## AGENDA PART 1

### Open to Public and Press

**1 Apologies for Absence and Declarations of Interest**

To receive any apologies for absence and declarations of interest.

**2 Minutes of Previous Meetings**

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To consider the minutes of previous meetings.

**3 Fees for hackney carriage & private hire drivers, vehicles and operators**

89 - 98

To consider the report on fees for hackney carriage and private hire drivers, vehicles and operators.

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The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

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# Agenda Item 2

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 27 JUNE 2018 at 7.30 pm**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, J Davey, M Foley, E Hicks and S Morris

Officers in attendance: A Bochel (Democratic Services Officer), T Cobden  
(Environmental Health Officer - Commercial), E Smith (Solicitor),  
A Turner (Licensing Team Leader) and M Watts (Environmental  
Health Manager - Protection)

Also present: B Drinkwater and D Perry (Uttlesford Licensed Operators and  
Drivers Association)

## LIC8 **PUBLIC SPEAKING**

Doug Perry spoke on the importance of having CCTV equipment in taxis and on the costs of enforcement being incorporated into the licensing fees for the taxi trade.

Barry Drinkwater said he was looking forward to hearing an update on the licensing policy review. He also spoke on ULODA's recent efforts to promote the taxi trade in the business community.

The Chairman thanked both speakers for their statements. He said he was sorry to hear of the incident in which a driver was robbed in his taxi. The council-owned CCTV camera had not been working but it was the driver's duty to maintain the camera. The department was planning to look at CCTV in taxis, but it would likely be too expensive for the department to fund it all. Officers would be looking into other options.

The Chairman said the review of licensing policy would take time, but it was better that it be done right rather than be rushed.

## LIC9 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillor Gerard.

## LIC10 **MINUTES OF PREVIOUS MEETINGS**

The minutes of the meetings on 17 April, 23 April, 24 April, 10 May and 4 June were signed and approved as correct records.

## LIC11 LICENSING POLICY REVIEW

The Chairman asked the Environmental Health Manager – Commercial to summarise the progress of the review so far.

The Environmental Health Manager – Commercial said due to the current workload and staffing resource pressure it had been a struggle to move things along as expediently as he would have liked. In September, the team would be acquiring the services of the licensing manager from East Herts District Council for 12 months at one day a week. This would allow the team to have a dedicated and technically knowledgeable individual focused purely on driving the review forward and implementing its findings. There were clear benefits in establishing consistency of approach and sharing good practice between two neighbouring authorities.

The Environmental Health Manager (Commercial) said he had identified three areas of immediate priority and work had commenced on delivery using in house resource. These areas of priority were:

- To ensure the existing team was supported through the transition and that sufficient resource was available to address short term pressure and keep on top of existing workloads. Two new members of staff had been secured, one to cover for an existing team member who is on maternity leave and one to provide additional cover for 14 months. An additional part time resource had been put out to advert.
- To instigate changes to requirements for training, knowledge testing, English language competency and safeguarding.
- To introduce a driver suitability policy. The Licensing Team Leader was working on a compare and contrast exercise to ensure that any policy incorporated the best elements from both authorities and was reflective of the needs at Uttlesford.

*A more detailed written update of the licensing policy review is attached to these minutes.*

## LIC12 SKY LANTERNS AND HELIUM FILLED BALLOONS

The Environmental Health Manager – Protection gave a summary of the report. He said Full Council had supported a motion to request the Licensing Committee give consideration to the inclusion of a condition on premises licensing to prevent helium balloon and sky lantern release. Sky lanterns were potentially dangerous and caused unnecessary litter. Helium balloons were a source of littering and environmental hazard. While the use of sky lanterns was not a licensable entertainment or activity, the Committee could adopt the measures recommended in the report.

Members discussed issues such as the danger of fires caused by sky lanterns, the litter caused by balloons and the need to educate the public of these problems.

The Environmental Health Manager – Protection said he would confirm how various councils and royal parks had been able to impose bans and restrictions on sky lanterns and helium balloons.

RESOLVED that officers adopt the following measures:

- 1) Ensure that the use of sky lanterns and helium filled balloons are discouraged at multi-agency Safety Advisory Group (SAG) meetings.
- 2) Provide information discouraging the use of sky lanterns and helium filled balloons to applicants seeking Temporary Events (TEN applications).
- 3) Environmental Health to make representations when there are legitimate public safety concerns regarding the use of sky lanterns at particular venues.

#### LIC13 **STATEMENT OF PRINCIPLES GAMBLING ACT 2005**

The Licensing Team Leader gave a summary of the report. She said it was to seek members' views as to whether any alterations were required to the policy prior to it going out for consultation.

Members said it might be worth introducing a local area profile, but at present this would create too much work for members of the licensing team. It would be kept under review.

RESOLVED to approve the draft statement of principles under the Gambling Act 2005 annexed to the report as the basis for 6 week consultation.

#### LIC14 **CROSS BORDER OPERATIONS**

Members considered the report by the Environmental Health Manager – Protection.

#### LIC15 **ENFORCEMENT UPDATE**

Members considered the report by the Environmental Health Manager – Protection.

The meeting ended at 8.15pm.

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## Verbal update current review of UDC Licensing Service

Last October we commissioned Oliver Rawlings, the licensing manager at East Herts District Council to undertake a critical review of our Licensing Service. The draft report detailing his findings was submitted in February this year. When the report was originally commissioned it was thought it would focus on a limited area of the service but clearly its scope grew.

This is not intended to be the definitive report to Committee but rather a brief verbal summary of Mr Rawlings findings for each of the areas covered by the review and to indicate as appropriate what action has been taken to date. It is delivered at the invitation of the Chairman and Mr Rawlings full report will formally be presented to Committee at a later date.

1. **Current policy and implementation.** UDC meets all the legal requirements for licensing taxis but the standard required by new applicants is low. All neighbouring authorities and all in Essex have a knowledge test of some sort and generally require a driving test. The current policy also has a lack of clarity for the Trade and Officers regarding service standards and timeframes.
2. **Current enforcement policy.** Areas are unclear, with reference to decisions being made by a post that no longer exists. Action has been taken to change where the delegated powers now rest and appropriate officers are authorised but this needs reflecting in the main policy document. Time scales need to be reviewed/set for normal circumstances decisions and a driver suitability policy introduced.
3. **Staffing, structure and resources.** All the staff in post are good at what they do and care about their service but the volume of work means a staff absence or unforeseen work can upset the balance. Service standards are not documented but the Trade aspire to a 2-day turnaround for a valid application to be issued. To put this in context EHDC currently have a PI to issue a driver's licence within 21 days of the application being validated. UDC has no PI's in place for licensing.

Enforcement work is in a separate team so there is some disconnect between the process and enforcement sides. Process team already pick up some work for the enforcement officer, letters, appointment booking etc. but as they operate on two IT systems and do not sit in the same rooms it causes issues. The logical conclusion is to place a dedicated enforcement officer in the Licensing Team managed by the Team Leader to allow multi skilling and increase resilience going forward.

All of the trade consultation undertaken shows that they feel there is room for improvement in licensing presence on district. This has also been agreed by Enforcement, proactive work suffers due to the current workload/staffing. Put bluntly there is no point in having rules if we do not have the resource to check compliance.

4. **IT systems.** There are currently two systems being used in licensing, Lalpac (a good licensing only system) and Uniform recently adopted by enforcement. We are

currently moving towards establishing both teams on Uniform. Benefits of this will be that everyone in licensing would, with certain exceptions, be able to access the records and view service requests for enforcement. It would also allow sharing of information across the authority, consultee access and emailing of licence holders etc. which can result in efficiency's saving on officer time. The setup and transfer of existing data is critical for the team to get the most from the system and gain some efficiency's. A work management package such as Enterprise will be beneficial for managers and the team to view and prioritise workloads.

Work has already commenced on improving our IT support and usage. Hard copy files relating to taxi licensing have been removed from the office and together with all incoming documents, are being scanned and filed within an electronic document management system. This system will also work with Uniform. Discussions are ongoing to ensure that electronic documentation supports increased efficiency.

Going forward care is being taken that the change of software systems does not impact detrimentally on the licensing process especially as we are about to enter year three of the three year drivers renewal cycle. To minimise pressure, testing on the Uniform software and our data import will commence 16<sup>th</sup> November with a view to the new system going fully live on 09<sup>th</sup> February 2019.

5. **Partnership.** There is a need to build relationships with the Police for data sharing with regard to taxi applications. Some other authorities have agreements in place that allow them to pass applications to the police at an early stage of the process. This has proven, on occasions, to provide more intelligence than the DBS certificate.

Trade issues with parking and ranks could possibly be addressed through joint operations with parking enforcement as there are limited resources to do this currently and with so many Uttlesford drivers working on contracts outside the district it is important to build relationships with the authorities awarding those contracts.

6. **Engagement with the trade, openness and transparency.** It was found that the development of Taxi Chat makes it a valuable tool for communicating with the Trade. It not only informs the Trade of changes but is used to remind them of responsibilities and is a forum for them to interact. Along with the introduction of Uniform it can give a documented evidence trail that drivers have been reminded about compliance. If a matter later ends up in court and a driver denies knowledge then the document log can be evidenced.

ULODA are very keen to engage with UDC, something that the licensing team support but this engagement must be a mutually supportive partnership and not one which focuses only on supporting our own individual agendas. ULODA have requested promotion of their services to all new applicants which we are willing to support by a web link, use of Taxi chat and / or potentially a 10 minutes slot on driver training days should we adopt them. To be most effective this will obviously

require that ULODA membership remains representative of the drivers within Uttlesford.

7. **Openness and transparency.** There is no issue with the Trade having access to how the fees are worked out and this will continue, however it must move away from any perception or confusion that the Trade can “endorse” the fees and charges. That function will and must remain with Officers and this Committee.

The licensing website needs thoroughly updating as it contains contradictory information and is not felt to be user friendly.

Going forward we may also look to establish a twice yearly informal forum / discussion group where representatives from both the Trade and the Council can meet and discuss concerns, issues and developments that are happening in each other worlds. This however cannot be allowed to turn into just a talking shop as this will both alienate the Trade and not be a productive use of officer time.

8. **Public safety.**

This is the very core of the licensing regime. Currently UDC have one of the lowest fees (nationally) and the lowest criteria of any neighbouring authority or across Essex. UDC is fulfilling its statutory requirement but additional measures should be considered and we are proposing to look at introducing or reviewing our approach to the following areas.

- Driving assessment (previously DVLA test) for new applicants and in certain circumstances for existing licence holders linking this to a suitability policy and change in requirement to have held a drivers licence for a minimum of 1 year to 3 years
- Knowledge test including testing for routes (for Combined licence not PH, which may need us to change the licences being issued), Highway Code, safe guarding/prevent and basic arithmetic (can be used as a measure of English competency if no other measure felt appropriate).
- Training for new drivers and on renewal covering matters such as driver safety, customer service, legislation, rules and regulations, prevent, safe guarding and disability awareness.
- English competency test as it is felt that the current test may be subjective
- Introduction of a policy to promote all new HCV being fully wheelchair accessible from a certain date i.e. 3 or 5 years from decision. A list under Section 167 of the Equality Act 2010 should be set up and maintained.
- Limiting number of Hackney Carriages, reflecting the Trade views that UDC just keeps licensing new HC and there are too many. To limit the numbers an unmet demand survey will need to be carried out and then renewed every three years.
- Operators, vehicle and driver conditions to be updated to reflect changing culture such as the use of APP based booking Operators. Review the Equality and Convictions policy. With respect to vehicles - Perhaps looking at change from minimum capacity engine to BHP/kW output, With respect to Drivers –

more clarity around requirements to avoid ambiguity, increased reporting responsibilities and mandatory attendance at training.

- Garages – tighten auditing procedures ie must photograph vehicles.
- Ensure that all our forms are up to date, fit for purpose and meet any legislative requirements.

### **To conclude on the action taken so far**

Due to the current workload and staffing resource pressure it has been a struggle to move things along as expediently as we would have liked. In an attempt to address this I have been in discussion with the Head of Environmental Health and Licensing at East Herts with a view to exploring ongoing mutual support between our two teams. Happily we have again been able to secure the service of Mr Rawlings for 12 months at one day a week commencing in September. This will allow us have a dedicated and technically knowledgeable individual focused purely driving things forward, reporting back to both Committee and Cabinet and consulting with the Trade as appropriate. He will also act as a mentor to the existing Licensing Team leader, offering advice and supporting the amalgamation of enforcement within the licensing team proper. There are clear benefits in establishing consistency of approach between two neighbouring authorities and sharing good practice which currently exists on both sides.

We have also identified three areas of immediate priority and work has already commenced on delivery using in house resource.

**The first priority** is to ensure the existing team is supported through the transition and that sufficient resource is available to address short term pressure and keep on top of existing workloads. We have interviewed and secured two new members of staff, one to cover for an existing team member who is on maternity leave and one to provide additional cover for a period of 14 months to assist process with the projected workload increase necessitated by being in year three of the driver renewals. These posts are due to start on the 2<sup>nd</sup> and 10<sup>th</sup> of July respectively. An additional part time resource has been put out to advert to allow us to cover the pressure created by changes to the driver mandates arising from the DVLA complying with GDPR requirements. An existing team member has also temporarily increased her part time office hours and been working from home in the evenings to help address the backlog of work, something that again shows the commitment of the team

**Second Priority** to instigate changes to our requirements for:

- Training
- Knowledge test
- English language competency
- Safeguarding

This is all a question of content, capacity and accommodation, members of the licensing team have benchmarked approaches from other authorities, met with a company Diamond with a view to drawing up a test that could be delivered in house and arranged to attend a day long course covering all the elements currently used by a number of authorities. This

course if adopted would have a number of potential advantages both for the service and drivers alike.

**Third Priority** To introduce a driver suitability policy. As part of the review a draft suitability policy was made available by Mr Rawlings for us to consider, consult on and adopt, however since then the IOL have also produce guidance on driver suitability policies. Ms Turner is currently working on a compare and contrast exercise to ensure that any policy we adopt incorporates the best elements from both and is reflective of the needs at Uttlesford. When complete this policy will be presented to Committee and presented to the Trade for comment.

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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on THURSDAY, 30 AUGUST 2018 at 10.30 am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker and J Davey

Officers in attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer), J O'Boyle (District Environmental Health Officer), E Smith (Solicitor), A Turner (Licensing Team Leader) and S Williams (Enforcement Officer).

Also Present: T Atkinson (Applicant); Mrs Blows, Mr Christou and Mr Kryzevicius (speaking in relation to item 2); the driver in relation to item 4.

**LIC41 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence.

**LIC42 APPLICATION FOR A PREMISES LICENCE - FAIRYCROFT HOUSE  
SAFFRON WALDEN**

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Team Leader gave a summary of the report.

Fairycroft House, Saffron Walden had historically been a youth centre serving the town for over thirty years. The venue was now being used as a community arts and media centre with a bar and hall that hosted live music events. The premises owners had decided to apply for a premises licence as they were running out of temporary event notices.

The Chairman invited those who had submitted representations to address the Panel.

Mr Kryzevicius said he lived next door to Fairycroft House and was concerned that if a premises licence was granted there would be an increase in noise and disruption to neighbouring properties. He said he was particularly worried for his children who had found it difficult to sleep at night when events were hosted in Fairycroft House, especially during the summer months when windows were left open.

Mrs Blows said she lived across the road from Fairycroft House but was still disturbed late at night when people were leaving the venue, particularly when they came and sat on her ground floor window sill. She could also hear the music as windows had been left open during the summer months. She was concerned that if a licence was granted, this would provide an opportunity for the premises owners to open every night.

In response to a question from Mr Atkinson, Mrs Blows said she heard the music on Sundays, up to 10pm.

Mr Atkinson said this was not live events but rehearsals, which were not related to the conditions of a premises licence.

Mr Christou, speaking on behalf of Mrs Christou, said he lived next door to Mrs Blows and was also disturbed by the noise pollution emanating from Fairycroft House. He said any events after 8pm would cause a public nuisance in such a built up and residential area and these concerns had not been addressed in the application. He highlighted a number of elements that could be conditioned to mitigate the impact on residents. He supported the continued community use of Fairycroft House but was worried about the effects such a licence would have on neighbouring residents if granted.

The Chairman invited the applicant to address the Panel.

Mr Atkinson said he wanted to reassure those present that he would work with local residents to find a solution for all. He said he was not opening a bar or nightclub and the majority of people working at the venue were volunteers. He had only applied for the full allowance of hours in his application as that had been the advice he had been given; he stressed that there was no intention of opening every day. He said a range of events were hosted for the community at the venue, such as music school concerts and jazz nights, and 90% took place on a Friday or Saturday night. He said the intention was to create a community resource for the town.

He said it was clear from the comments of those in attendance that most of the music heard by neighbouring residents was from rehearsals, not live events. He said he would deal with the issue of rehearsals separately, but said he would address the noise spillage that was disturbing residents. He said an application for a lottery grant to improve the soundproofing of the venue had already been submitted.

In response to a number of questions relating to the floor plan and security of the building, Mr Atkinson said the stairwell to the upper floor officer was secured and staff would be present in the main hall to ensure drinking was monitored.

Councillor Barker asked what type of music was played at live events and what was the typical demographic.

Mr Atkinson said he wanted all types of music to be played at the venue but in the recent past the concerts had been predominantly jazz. The hall was used by all ages, from pre-school children to the elderly.

In response to a question from the Chairman, Mr Atkinson said work would be commencing in twelve weeks' time on soundproofing the upstairs windows.

The Solicitor said Mr Atkinson had applied for a premises licence as no lesser type of licence was available; if Fairycroft House was to continue to host events, he had no alternative.



The District Environment Health Officer added that whilst rehearsals were not a licensable activity, associated noise pollution was covered by Environmental Health legislation and measures could be enforced if necessary.

*The Panel retired at 11.40am to make a decision.*

*The meeting was reconvened at 12.25pm.*

*The Chairman read the decision to those present.*

## **Decision Notice**

The application before the Panel today is for the grant of the premises licence in respect of Fairycroft House, 37 Audley Rod, Saffron Walden. The premises have never been licensed before and are now a community and arts centre with a hall and bar area. The application is attributable to the fact the proprietors are “running out” of TENS notices.

We have the following documents before us:-

Premises licence application (Appendix 1)  
Plan of premises (Appendix 2)  
Representation from Statutory consultee (noise/nuisance)( Appendix 3) agreeing condition with applicant (Appendix 3A)  
Representations from Interested parties (Appendix 4A – 4E)  
Location of premises (Appendix 5)

We have also considered the provisions of the Licensing Act 2003, the most recent Home Office Guidance and the Council’s policy statement.

Copies of this application have been served on all the statutory bodies. Environmental Health were the only statutory consultee to raise a representation regarding noise/nuisance, which they withdrew upon the Applicant agreeing to a condition on his licence (confirmed in writing on 5th July 2018) addressing issues surrounding the public nuisance objective. Details of this condition can be found in Appendix 3. However, five representations have been received from interested parties in Saffron Walden raising concerns based on the licensing objectives that relates to the prevention of public nuisance and crime and disorder. They are concerned that disturbance to neighbours would be caused by:

- (a) Disturbance to property, bottles/cans thrown into gardens and congregation of people outside drinking.
- (b) Live and Recorded music being played loud at all levels to create a public nuisance.
- (c) Insufficient acoustic insulation when music is being played.

The matter has therefore come before us today. We are required to promote four statutory objectives in the exercise of our functions, namely:

- The prevention of crime and disorder
- Public safety

- The prevention of public nuisance
- The protection of children from harm

The decisions open to the Committee in determining this application are to:-

- Grant the application; or
- Modify the application by inserting conditions; or
- Reject the whole or part of the application

When determining an 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. This we have done.

The relevant sections of the Council's Licensing Policy are as follows:

5.1 Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Licensing Authority wishes to proactively maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

5.2 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

5.3 Applicants need to be clear that the Licensing Authority may apply stricter conditions, including controls on licensing hours, where licensed premises are in or near residential areas and where relevant representations have been received. Conversely, premises which can demonstrate that they have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.

5.5 The Licensing Authority does recognise that in some circumstances flexible licensing hours may help to avoid concentrations of customers leaving premises simultaneously and could reduce the potential for disorder. It also recognises that licensing hours should not inhibit the development of safe evening and night-time local economies. However, the Authority will always seek to balance their decisions with the duty to promote the four licensing objectives and the rights of residents to peace and quiet.

5.6 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

5.7 When addressing the issue of prevention of public nuisance, the applicant should consider those factors that impact on the likelihood of public nuisance. These may include:

- (a) the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- (b) the hours during which the licensable activities will be carried out particularly between 23.00 and 07.00
- (c) A “wind down period” between the end of the licensable activities and closure of the premises the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
- (d) the design and layout of premises and in particular the presence of noise limiting features
- (e) the occupancy capacity of the premises
- (f) the availability of public transport
- (g) A last admission time

5.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, in the event that representations are received, having regard to their particular type of premises and/or activities:

- (a) Effective and responsible management of premises
- (b) Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly
- (c) Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries and clearing up
- (d) Provision of effective CCTV in and around the premises
- (e) Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA)
- (f) Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- (g) Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- (h) Liaison with public transport providers
- (i) Siting of external lighting, including security lighting
- (j) Management arrangements for collection and disposal of litter
- (k) Effective ventilation systems to prevent nuisance from odour

For the sake of completeness, I also quote the relevant sections of the most recent Guidance issued by the Home Office in April of this year. They are:-

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 15). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

We have heard from the Applicant, Mr Atkinson, and from three of the interested parties, Messrs Kryzevicius, and Christou, and Mrs Blow. We have also heard from Mrs O'Boyle of Environmental Health and we note that the Applicant agreed to that department's additional requirements by return email. We also note that Mr Atkinson is running a community organisation in a building that has been a youth/educational facility since the Second World War and that the business mechanism under which he operates restricts his ability to dispose of the undertaking to anything other than another community enterprise: we also take note of his wish to be a good neighbour, his attempts to secure funding to secure further soundproofing works to a two hundred year old building, and his offer to provide interested parties with a mobile phone number upon which they may report concerns.

Mr Atkinson has made it clear that he is not running a pub or a bar, and that he has made the application he has, for the hours that he has, upon advice: there is no option other than a premises licence open to him. We find him to be a conscientious and careful man and we believe that he will continue to be a good neighbour and will carry out the undertakings he has made today.

We therefore grant this application and he will receive the paperwork in due course. If there are any problems it is open to the statutory authorities to bring the question of the licence back before us and as Mrs O'Boyle has said, noise issues may also be raised with Environmental Health. We do hope that this will not be necessary and that these premises will not come to our attention in future.

However, the interested parties do have a right of appeal against this decision which must be exercised within a period of 21 days. They will receive a letter from the Legal Department, with a copy of this decision notice, explaining this.

LIC43      **EXCLUSION OF THE PUBLIC AND PRESS**

*RESOLVED that under section 100I 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 paragraphs 1 and 2 part 1 of Schedule 12A of the Act.*

LIC44      **DETERMINATION OF AN APPLICATION FOR A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chairman introduced the Panel and explained procedure to those present.

The Enforcement Officer gave a summary of the report.

On 12 June 2018, the driver applied to this authority for the grant of a private hire/hackney carriage driver's licence. A standard driver check was carried out which identified two speeding offences from 2016 which had not been declared on the driver's application form. The driver attended a meeting with the Enforcement Officer on 10 August 2018 and said he had forgotten the two motoring offences from 2016 as they had not been written down.

The driver was invited to address the Panel.

The driver said he had simply forgotten the two offences from 2016 as they had not been written down on his paper licence. Previously he had been an operator and knew the importance of declaring such information when applying for a licence.

In response to a question from Councillor Barker, the driver said he was acutely aware that the Council would carry out a driver check, and he knew what would happen if an offence was not declared, due to his experience as an operator. He said it was a simple mistake and he really had just forgotten to list the two offences.

*The Panel retired at 11.40am to make a decision.*

*The meeting was reconvened at 12.25pm.*

*The Chairman read the decision to those present.*

**Decision**

The driver's application dated 12th June 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd carrying out school contract work.

The Council's standard application form asks a number of questions about an applicant's antecedent history. A copy of the form completed by the driver is before us and he has been provided with a copy prior to the hearing today.

One of the questions is “Has your licence ever been endorsed for a fixed penalty offence within the last four years?”

The driver answered no to this.

Another is, “Have you ever been convicted of ANY offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?”

The reply to this was that in February 1973 the driver was convicted of indecent exposure at common law for which he received an admonishment and in December 2003 he was convicted of knowingly making a false entry in a book/registration document for which he was fined £100. The driver also advised that he had two endorsements on his licence for motoring offences, one was an SP30 offence in June 2009 for which he received 3 penalty points on his licence and the second was an SP30 offence in June 2014 for which he received 3 penalty points on his licence. These points are no longer live.

However, as part of the due diligence process a standard driver check was carried out by the Council on 24 July 2018 and this identified two undisclosed motoring offences for which the driver had received penalty points on his driving licence. The first was in June 2016 which was an SP60 offence (speeding) for which he received 3 penalty points on his licence and the second was in August 2016 and was an SP30 offence (speeding) for which he received 3 penalty points on his licence. These six points are all current.

The driver was invited to a meeting with the Enforcement Officer on 10th August to discuss this non-disclosure. He explained that in completing the application form he had included the endorsements on his counterpart licence even though these convictions were spent, but he had forgotten the two motoring offences from 2016 because they were not written down.

The details behind the SP60 offence are that the driver was working as a courier driver at the time and believes he was driving somewhere around the M14/M1 area where he recalls there was numerous road works and believes that there must have been a temporary reduction in vehicle speed to 50 mph going through the roadworks and the driver advised he was doing just over the 50 mph speed limit at the time. The offence was caught by a speed camera. The SP30 offence also occurred in the course of the same employment, near Ipswich; the speed limit for the road was 30 mph and the driver was again caught by speed camera doing around 35 mph.

The driver advised the Officer that up to 2012 he was an operator of his own company licensed through Braintree District Council where he managed a fleet of 25 vehicles carrying out school contract work and transportation of children with special needs.

Making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, but although the Environmental Health Manager (Protection) has deemed it not in the public

interest to prosecute The driver, his application was referred to this Committee for determination.

We have listened to what the driver has had to tell us and we accept that it was a genuine oversight and that he is truly sorry. We accordingly grant his application and he will receive the paperwork in due course.

LIC45 **DETERMINATION OF AN APPLICATION FOR A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The driver in relation to this item had not received the Enforcement Officer's report or correspondence. The Panel therefore agreed to defer this case.

The meeting ended at 1.00pm.



**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, CB11 4ER, on TUESDAY, 11 SEPTEMBER 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, A Gerard and J Loughlin.

Officers in  
Attendance: T Cobden (Environmental Health Manager – Commercial), B  
Ferguson (Democratic Services Officer), J Jones (Licensing  
Officer) and E Smith (Solicitor).

Also Present: G Ashford, Immigration Officer Gear and V Powell (Essex Police),  
Z Chowdhury and O Sharif (Licensees), M Harman (Solicitor for the Licensees),  
J Bakker, L Crowther, B Haines, A Puddick, M Regan and P Scolah (speaking in  
support of the Licensees).

**LIC46 APPLICATION FOR A REVIEW - QUEEN VICTORIA GREAT DUNMOW**

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Officer gave a summary of the report.

The Council had received an application from Essex Police for the review of  
Queen Victoria restaurant's premises licence. Essex Police were seeking a  
revocation of the licence on the grounds that the prevention of crime and  
disorder licensing objective had been breached, due to the discovery of  
disqualified persons working illegally on the premises.

No right to work checks had been carried out, demonstrating a disregard of  
statutory requirements and hence a failure to prevent crime and disorder. The  
Notice of Review had been issued by the Council on 18 July 2018, with a  
consultation period lasting until the 14 August.

During this time sixteen letters of support for the restaurant had been submitted.  
Members were asked to determine the review with due regard paid to the  
Council's Licensing Policy and the Secretary of State's most recent Guidance  
issued in April 2018 under Section 182 of the Licensing Act 2003. This Guidance  
deals specifically with immigration offences.

At the invitation of the Chairman, Mr Harman questioned the Licensing Officer  
regarding the content of the report.

Mr Harman asked whether the Council's view on criminality was guided by its  
licensing objectives.

The Licensing Officer confirmed that it was.

The Chairman invited the representatives from Essex Police to put their case  
forward.

Mrs Powell referred to Regulation 19(b) Licensing Act 2003 (Hearings) Regulations 2005 and said the Panel could only consider evidence relevant to the licensing objectives and that character references were therefore irrelevant.

The Chairman said in the interests of transparency, the Panel would hear from those representatives who had attended the meeting to speak in support of the Queen Victoria restaurant, to ensure there was an equal and fair opportunity for both parties to put their case forward but would take advice as to the weight to be accorded to their comments.

Mrs Powell presented the case of Essex Police. She said illegal workers had been found on the premises on 6 July 2018, and that the restaurant had a history of this. She asked Officer Gear, who had been involved in the immigration raid, to describe what had happened on the day.

Officer Gear outlined the details of the Queen Victoria raid on 6 July 2018. He said four staff, of Bangladeshi origin, were believed to be working illegally and three were detained. The fourth absconded and it was deemed unsafe to give chase. The raid had been brought about due to intelligence provided to the Police but the history of the site was also important, with illegal workers being found on three separate occasions in 2013, 2014 and 2016.

Mrs Powell said it had been the fourth time in five years that illegal workers had been found on the premises. She said Mr Chowdhury, following a previous immigration raid, had been quoted in the Dunmow Broadcast newspaper as stating he knew right to work checks had to be carried out and that he would do so in future.

In the opinion of the Police, in the days immediately following the 6 July 2018, Mr Chowdhury had applied for a transfer of the licence in an attempt to mitigate the negative impact of the pending review. Whilst the transfer had been refused, this pattern of behaviour demonstrated that he was knowingly and deliberately seeking to flout the law, thereby breaching the prevention of crime and disorder licensing objective.

Mrs Powell explained the impact of illegal working on local communities and said it put a strain on infrastructure, provided an unfair commercial advantage and exploited individual workers with low wages and no employment rights. She said such practices were akin to modern day slavery. Whilst some wage slips had been provided to the Police, they all showed wages so low that the workers did not qualify for National Insurance contributions or income tax. She said these documents did not correspond with what the workers had said to the immigration officers when interviewed, as they had said Mr Chowdhury had employed them himself and would pay them £150 per week.

The Chairman invited Mr Harman to ask any questions he may have.

Mr Harman asked for clarification regarding the four people detained on 6 July 2018.

Officer Gear said four illegal workers had been found but only two had been arrested. One worker had absconded from the site but his passport had been found during the raid and he too had no right to work in the UK.

In response to a Member question, Officer Gear explained the practice of “immigration bail” which amounted to “temporary release” for those people whose applications were being processed by the Home Office. He said not all illegal workers were detained but would be subject to other conditions such as no right to work or study, and were obliged to abide by the conditions of their bail e.g. signing into a police station on a daily basis.

Councillor Loughlin asked whether the illegal workers found at the Queen Victoria were provided with accommodation.

Officer Gear said one of the men detained had claimed he lived above the restaurant and that the accommodation was part of his wages.

Councillor Gerard said there had been four immigration offences since 2013. He asked whether the Panel could only consider the most recent offence in 2018 when determining the reviewing.

Mr Ashford said all offences should be taken into account as it demonstrated a sustained pattern of behaviour of using illegal workers.

The Chairman invited Mr Harman to put forward the case on behalf of the licensees.

Mr Harman said the Queen Victoria restaurant was a well-run establishment; save for the immigration issues that had been highlighted by the police. He said many representations had been received in support of the restaurant and asked whether those that had attended the hearing could address the Panel.

The Chairman agreed to hear the representations.

The Solicitor said Members must be aware of the fact that the public representations could hold no weight under Regulation 19(b) of the 2005 Regulations and should not be taken into account when determining the application.

The Chairman invited the public speakers to address the Panel.

#### Mr Puddick

Mr Puddick said the Queen Victoria was an asset to the community and would be a great loss to the town. The pub was family orientated and he had never witnessed any crime within the premises. Mr Chowdhury was a supporter of the local football team, sponsored floats at the carnival and offered the pub’s carpark when there had been parking problems at the school. He added that he knew other members of staff at the Queen Victoria who had worked there for many years.

### Mrs Scorah

Mrs Scorah said she was fully supportive of the Queen Victoria. She had attended the opening of the restaurant many years ago and Mr Chowdhury had made it the best in town. Mr Chowdhury played a full and active role in the community and it would be appalling to deprive him of his livelihood.

### Mrs Regan

Mrs Regan said she was a former teacher and had taught both Mr Chowdhury's and Mr Sharif's children. She said they were good family men. There were hardly any pubs left in Dunmow and this would be a loss to the town. She said Mr Chowdhury had now hired an employment specialist to ensure he did not make the same mistake again.

### Mrs Bakker

Mrs Bakker agreed with the speakers that had come before her. She said it would be devastating to lose the Queen Victoria and a great shame for the community.

### Mrs Crowther

Mrs Crowther said she had been widowed and Mr Chowdhury had offered her exceptional support. He was a kind man and he always ensured she got home safely. She said Mr Chowdhury had much care for his community.

### Mr Haines

Mr Haines said Mr Chowdhury had restored the Queen Victoria restaurant through hard work and business acumen. The pub was a safe and welcoming space and compliant with legislation. Mr Chowdhury was a retained fireman and had spoken at the local school, demonstrating his standing in the community. He said the business would be destroyed if the Panel were to revoke the licence.

Mr Chowdhury was invited to address the Panel.

Mr Chowdhury said he had worked hard for twenty years to build the business but he had made mistakes, which he now wanted to rectify. He stated the following in relation to the four immigration raids detailed by Essex Police:

2013 – Eight individuals were arrested but five were not charged. The fine for the three men that were charged was reduced by 50% as Mr Chowdhury cooperated in full.

2014 – Mr Chowdhury was not present on this occasion but all of the four men who were arrested were in the country on student visas.

2016 – Mr Chowdhury said there was no raid in 2016 but there was a police visit whereby Mr Chowdhury was asked to facilitate a meeting with his mosque.

2018 – Mr Chowdhury said both of the men arrested following the raid had only arrived that day, and Mr Chowdhury had only been at work for six minutes before the raid commenced.

Mr Chowdhury said he had never knowingly employed anyone illegally but, due to commitments with another restaurant, he had not had time to manage the Queen Victoria. He now had given up the other business and would focus fully on the Queen Victoria.

Mr Chowdhury said he had been naïve in 2013 and the immigration problems he faced were partly due to his Bangladeshi culture whereby jobs were sought through friends and family and not through a formal process.

Mr Chowdhury apologised to the Panel for his mistakes and asked for the opportunity to put things right.

In response to a question from Mr Harman, Mr Chowdhury said these problems stemmed from the complicated student visa system. He now had sought assistance from a recruitment company to help implement right to work checks and he had learnt techniques to ensure these checks were effective.

The Chairman invited Mr Sharif to address the Panel.

Mr Sharif said they had made a mistake at the Queen Victoria but would learn from this experience. If the pub was taken away everyone involved would suffer, including his children. He asked the Panel to give them another opportunity.

Councillor Loughlin asked whether the licensees were aware of the summary guide to right to work checks as found on the Home Office website.

Mr Chowdhury said he was now aware of the website but had not been at the time of the raids.

Councillor Loughlin said Mr Chowdhury took over the business in 1998 and the right to work checks legislation came into effect in 2006. She asked why he had not familiarised himself with the law.

Mr Chowdhury said he had not looked at the legislation but was only following what everyone else did in the Bangladeshi restaurant culture. He said he had now learned his lesson and would no longer employ those on student visas.

In response to a Member question, Mr Chowdhury said the men pictured with suitcases in the CCTV evidence would have only rested above the restaurants in between shifts. He said workers often came from London and he would provide temporary accommodation, particularly if they were working nights. He said this accommodation was not part of their wages.

Councillor Gerard said it was mandatory for licensees to keep up to date with legislation. He asked who was accountable for carrying out right to work checks at the Queen Victoria.

Mr Chowdhury said it was his and Mr Sharif's responsibility but they had previously misunderstood the law. He said they were now paying a recruitment specialist to keep them abreast of any changes to the law and they were updated on a quarterly basis.

Councillor Barker asked for clarification regarding the number of people detained on 6 July 2018 as the report stated four illegal workers were found, although Mr Chowdhury only referred to three illegal workers.

Mr Ashford said four offenders were found on the day.

Mr Chowdhury said he was only aware of three offenders although he agreed that the passport of the 'fourth' illegal worker was found during the raid.

*The Chairman adjourned the meeting at 11.50am.*

*The meeting was reconvened at 12.00pm.*

At the invitation of the Chairman, Essex Police made their final submission to the Panel.

Mrs Powell said it was irrelevant that Mr Chowdhury and Mr Sharif were not aware of legislation; they were obliged to implement right to work checks and by not doing so were flouting the law. Mr Chowdhury had failed to comply with legislation, even though he had been provided with guidance following previous immigration raids, including another at his restaurant 'The Pride of Sylhet'. She said revocation was the only suitable outcome to deter others and to ensure frequently flouting of the law did not go unpunished.

At the invitation of the Chairman, Mr Harman, on behalf of his clients, made a final submission to the Panel.

Mr Harman said he accepted that his clients had breached the prevention of crime licensing objective, but said they had complied with all other conditions. He said the real issue here was what action could be taken to prevent further breaches of immigration legislation.

The Queen Victoria itself was well run and no other incidents had occurred at the restaurant. It would be inappropriate in light of the offence to revoke the licence, which, in turn, would harm the local community. He said the history of immigration raids was accepted, although the visit in 2016 was a monitoring rather than an enforcement visit. The incident in 2013 was not Mr Chowdhury's fault as he was unaware that the individuals concerned had ceased studying and therefore were no longer allowed to work in the country. He added that no warnings had been issued so his client had not been fully informed by the Authority.

Mr Harman said his client had not taken on illegal workers purposefully, although it had shown poor judgement. Mr Chowdhury was compliant in all other aspects of the business, as VAT and income tax records demonstrated.

His client was of good character and an active member of the community. If the licence was revoked, the business would lose 60% of income related to the sale of alcohol. He said the public had faith in Mr Chowdhury and Mr Sharif to manage the Queen Victoria restaurant and they had even gone to the trouble of procuring the services of a recruitment specialist to ensure the business was fully compliant.

Mr Harman highlighted the actions open to the Panel and said Mr Chowdhury had even offered to resign his personal licence if it would rectify the situation.

*The Panel retired at 12.30pm to deliberate.*

*The meeting was reconvened at 2.44pm and the Chairman read the decision notice.*

### **DECISION NOTICE – QUEEN VICTORIA PUBLIC HOUSE/JALSA GHAR INDIAN RESTAURANT**

The application before the Panel today is for a review of the premises licence to the Queen Victoria, 79 Stortford Road, Great Dunmow at the behest of Essex Police, supported by the immigration authorities pursuant to licensing objective number one, the prevention of crime and disorder. In reaching our decision today we have taken into account the provisions of the Licensing Act 2003, the most recent Home Office Guidance, issued this year which specifically incorporates references to immigration issues, and the Council's Statement of Licensing Policy. We also have before us a document pack containing a report from the Licensing Team Leader, the premises licence, some maps and plans, the Police application, Home Office comments, a number of letters and testimonials from interested parties, and most recently, a bundle of personnel documentation submitted by the licensees.

Historically, the current licence was granted on 9<sup>th</sup> November 2005. No representations were made and the application was granted as asked. Following a raid on the premises made by UKBA and the Police on 6<sup>th</sup> July 2018, in the course of which persons with no right to work in the UK were apprehended (two of those persons also had no right to be in the UK). It appeared no right to work checks were being carried out as required by the various Immigration Acts. This amounts to a breach of licensing objective number one, the prevention of crime and disorder, and for the sake of completeness we set out the four objectives enshrined in the 2003 Act. These are:-

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

We have also been referred to case law which specifically provides that a) deterrence of others is a consideration that this Committee may have in mind (*The Queen on the Application of Bassetlaw District Council v Worksop*)

*Magistrates Court [2008] EWHC 3530 Admin*) in making its decision and b) there does not have to be a conviction for an offence under the 2006 Act for a licence to be revoked under the crime prevention objective ( *East Lindsey District Council v Hanif t/a Zara's Restaurant and Takeaway [2016]EWHC 1265 Admin*)

Following receipt of the Police application, a Notice of Review was issued by Uttlesford District Council's licensing department and personally served on 18 July 2018. The manager was not present and unable to be contacted so the Enforcement Officer explained to the staff members present what was happening and that the notice being put up in the window had to remain in position for 28 days. All statutory formalities have been observed.

The decisions available to the Committee upon a review are to:

- Allow the licence to continue unmodified
- Modify the conditions of the licence
- Modify the conditions of the licence for a period not exceeding 3 months.
- Exclude a licensable activity from the scope of the licence
- Exclude a licensable activity from the scope of the licence for a period not exceeding 3 months.
- Revoke a licence
- Remove the Designated Premises Supervisor

When carrying out a review of a licence, due regard should be given to the Council's licensing policy and Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003. The Secretary of State's most recent guidance issued in April this year includes new guidance in respect of immigration issues.

**Paragraph 2.6** says 'The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises'.

**Paragraph 4.22** highlights the importance placed on immigration offences, as it considers that it is grounds for objecting to the granting of a personal licence on the basis that it would be prejudicial to the prevention of crime and disorder.

**Paragraph 8.99** says (although in respect of objections to the transfer of a premises licence, again highlights that it would be appropriate), 'in exceptional circumstances for objections to be raised by the police or immigration officials where the transfer would be prejudicial to the prevention of illegal working.'

Furthermore, these following paragraphs of the Guidance deal specifically with a review of the premises licence, where crime and disorder is an issue. It



highlights the seriousness with which the Secretary of State expects licensing authorities to treat immigration offences on licensing premises.

**Paragraph 11.18** says 'Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.' I add that for civil immigration policies to apply there must be a contract of employment which is not the norm in the catering/hospitality industry.

**Paragraph 11.26** says 'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

**Paragraph 11.27** says 'There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- **for employing a person who is disqualified from that work by reason of their immigration status in the UK; [our emphasis]**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. '

**Paragraph 11.28** says 'It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.'

Further, the Council's licensing policy has the following relevant paragraphs

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

- The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events[our emphasis]**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- Illegal working

#### Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- (a) Effective and responsible management of premises
- (b) Training and supervision of staff
- (c) Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- (d) Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- (e) Provision of effective CCTV and mirrors in and around premises
- (f) Employment of Security Industry Authority licensed Doorstaff
- (g) Provision of toughened or plastic drinking vessels

- (h) Provision of secure, deposit boxes for confiscated items ('sin bins')
- (i) Provision of litterbins and other security measures, such as lighting, outside premises
- (j) Membership of local 'Pubwatch' schemes or similar organisations
- (k) Right to work checks on staff and retention of documents

If the Committee wishes to impose condition for the continuance of the licence, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation. We cannot therefore impose a condition regarding the undertaking of right to work checks – they are a legal requirement under the Immigration Acts

The Secretary of State's Guidance provides further assistance, and in paragraphs 10.8 and 10.10 it provides: -

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided...Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

We have considered all the material before us with care and we have heard from Mrs Powell and Mr Ashford on behalf of Essex Police, Immigration Officer Gear on behalf of the Home Office, and from Messrs Chowdhury and Sharif. Their solicitor, Mr Harman, has also spoken on their behalf.

We have also listened to a number of members of the public, who I will not list, but in listening to them we have been mindful that Regulation 19(b) Licensing Act 2003 (Hearings) Regulations 2005 requires us to disregard information given by anyone that is not specifically relevant to the promotion of a licensing objective: what these people had to say was in the character of character referees only and we did note that they dealt only with Mr Chowdhury. We therefore give what they said no weight.

We have noted the history of the premises and observed that on his own admission in 2013 and again in 2014 the business was sanctioned. Similarly, another business operated by Messrs Chowdhury and Sharif, the Pride of Sylhet, was sanctioned in 2011 for the same reason. There have been ample opportunities for lessons to be learned.

We have taken into account everything we have both read and heard and at this point I repeat the provisions of the April 2018 edition of the Home Office Guidance. For the first time, it **specifically** includes immigration offences in the list of matters Licensing Committees are required to take into consideration, and says:-

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

- Employing a person who is disqualified from that work by reason of their immigration status in the UK.

A civil penalty of up to £20,000 can only be levied if there is a contract of employment: however, the use of the words “disqualified from that work” suggest the Guidance also covers those who under the employment protection legislation are referred to as “Limb B” workers.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states *“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.”* We respectfully adopt this. Furthermore, His Lordship then said *“...the respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked”*. This case is on all fours with the one before us today, and in the light of the revised Guidance reinforcing the point, we agree with His Lordship’s conclusion.

The evidence we have seen shows that the individuals concerned admitted working without the proper immigration checks having been undertaken, and furthermore, that one of them also admitted to working less than minimum wage, ie for board and lodging, which is also a breach of other employee rights legislation. Finally, we cannot overlook the fact that this is not a first offence: this is the fourth time immigration officers have visited the premises, we also take into account the incident at the Pride of Sylhet, and we also appreciate that an Illegal Working Civil Penalty may only be imposed if the existence of a contract of employment can be established.

The grounds upon which the Police have made this application are that Licensing Objective One, the prevention of crime and disorder, has been breached. The important word is “prevention” and Mr Chowdhury and Mr Sharif have failed to prevent, not for the first time, illegal working. We have considered the decisions of *R on the application of Bassetlaw District Council v Worksop Magistrates Court [2008] EWHC 3530* and *East Lindsey District Council v Hanif t/a Zara Restaurant [2016] EWHC 1265* and are satisfied that even though on this occasion so far as we are aware Mr Chowdhury has not been subject to any penalty, the licensing objective is nevertheless engaged.

This Committee’s primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that Mr Chowdhury engaged the people referred to in the Police submissions to work unlawfully in this country.

We therefore consider that the premises licence should be revoked under S52 (4) (e) of the Licensing Act 2003 and that revocation is an appropriate step with a view to promoting the crime prevention licensing objective.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the license remains in force. Mr Chowdhury will receive a letter from the Legal Department explaining this.

The meeting ended at 3.10pm.

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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on WEDNESDAY, 12 SEPTEMBER 2018 at  
7.30 pm**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, J Davey, A Gerard, M Foley, E Hicks, S  
Morris.

Officers in

Attendance: M Chamberlain (Enforcement Officer), T Cobden (Environmental  
Health Manager (Commercial), B Ferguson (Democratic Services  
Officer), O Rawlings (Licensing Consultant), E Smith (Solicitor) and  
M Watts (Environmental Health Manager – Protection)

Also Present: B Drinkwater and D Perry (Uttlesford Licensed Operators and  
Drivers Association – ULODA).

**LIC47 PUBLIC SPEAKING**

Doug Perry and Barry Drinkwater spoke to the Committee. Summaries of their  
statements are appended to these minutes.

**LIC48 MINUTES OF PREVIOUS MEETINGS**

The minutes of the previous meetings held on 16 July, 31 July, 14 August and 21  
August 2018 were approved and signed by the Chairman.

Members noted that the minutes of the meeting held on 27 June 2018 had not  
been included in the agenda and would be taken for approval at the following  
Committee meeting.

**LIC49 STATEMENT OF PRINCIPLES GAMBLING ACT 2005**

The Committee considered the Statement of Principles – Gambling Act report,  
along with the appended Draft Statement of Gambling Policy 2018-21.

The Council's Gambling Policy Statement allowed the Council, as a Licensing  
Authority, to outline the considerations it would make in determination of  
Gambling Act applications. This draft Policy was only for minor changes (as the  
existing policy had been recently revised in 2017) therefore subject to just a 6  
week consultation exercise. Only one response was received to this  
consultation. This was from William Hill who stated that they did not agree with a  
full variation being required on the installation of privacy screens around gaming  
machines.

Members considered the Council's draft Statement of Gambling Policy 2018-2 in light of the representation from William Hill. Members agreed with the draft of the policy document set before them, and that it should be recommended in its current form to Full Council.

RESOLVED to recommend to Full Council that the final draft Statement of Gambling Policy 2018-2 be adopted.

LIC50 **ENFORCEMENT UPDATE - APRIL TO JUNE 2018**

Members considered the report by the Enforcement Officer. The report outlined enforcement activity undertaken by the Council between 1 April to 30 June 2018.

LIC51 **ENVIRONMENTAL HEALTH (COMMERCIAL) ACTIVITY REPORT**

Members considered the report by the Environmental Health Manager – Commercial, summarising environmental health commercial activity between 1 January and 30 June 2018.

LIC52 **ENVIRONMENTAL HEALTH (PROTECTION) UPDATE - VERBAL REPORT**

The Environmental Health Manager – Protection provided a verbal update on the work of his department.

Members discussed the issue of Air Quality and, in particular, 'bias adjustment factors' which were used to assess whether air quality was approaching dangerous levels.

Councillor Gerard said there was particular concern regarding air quality in his Ward of Newport.

The Environmental Health Manager – Protection said he would meet with the district councillors from Newport before the end of the month to discuss this in more detail. At the Chairman's request, he also agreed to write to Newport Parish Council to provide information on the subject of air quality.

*The meeting was adjourned at 8.35pm.*

*The meeting was reconvened at 8.40pm.*

LIC53 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer presented his report to the Panel.

It had come to the Council's attention that Mr Andrew Logan, a holder of a private hire/hackney carriage driver's licence issued by this Authority, had been



imprisoned for 14 months after admitting offences of threatening to damage or destroy property and causing criminal damage following an incident in Bishop's Stortford on 23 April 2018. Mr Logan had also moved address without notifying the Council within seven days of the move, a breach of the conditions of his licence.

Members considered whether Mr Logan was a 'fit and proper' person to hold a private hire/hackney carriage licence as he had been imprisoned for a violent offence.

The Chairman read out the decision notice.

### **Decision Notice**

The application before the Panel today is for the suspension or revocation of Mr Logan's limited joint private hire/hackney carriage licence number PH/HC0970 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 28<sup>th</sup> February 2019.

Mr Logan was employed as a mechanic at a Council approved testing station so currently only held a restricted private hire/hackney carriage driver's licence since he did not transport members of the public but merely road tested the licensed vehicles, and by law only licensed drivers can drive licensed vehicles. However, it has recently come to the Council's attention that Mr Logan has been imprisoned for 14 months after admitting the offences of threatening to damage or destroy property and causing criminal damage following an incident in Bishops Stortford on 23 April 2018. A copy of the news reportage is before us.

Mr Logan rang up his ex-partner at 11.45pm that night telling and told her that he was two minutes away and that he had a knife and that he would 'burn her out.' A few hours later he arrived at the driveway of her father's house where she was staying, and started to beep his horn and flash the lights. He then attacked the house itself and damaged the front door. When Mr Logan was sentenced he told the recorder that 'you will be judged too one day' and swore at him and his former girlfriend. When he was taken to the cells he continued to shout and punch the walls. As Mr Logan's licence is limited, he is not required to meet the requirements of paragraphs 5-11 of Appendix A of the Council's standards for drivers.

Furthermore, according to licensing records Mr Logan was last known to be living at 2 High View, Duton Hill, Dunmow, Essex, CM6 2DY. However, the newspaper article indicates that Mr Logan was living at an address at Woodfields, Stansted. Mr Logan appears to have also therefore breached one of the conditions that do apply to a limited licence, as he is required to notify the Council in writing of a change of address within seven days (condition 18a, Appendix G).

We have read the papers before us and we note Mr Logan is still in custody. It is unlikely that he will be released before his licence expires by effluxion of time:

however, we regard his behaviour as being so serious that even though Mr Logan is not licensed to drive passengers, in the interests of the proper protection of the public we consider that we have no alternative but to revoke Mr Logan's licence with immediate effect under S61 (b) of the 1976 Act as he is no longer a fit and proper person to hold it.

There is a right of appeal against this decision which must be exercised within a period of 21 days. Mr Logan will receive a letter from the Legal Department explaining this.

**LIC54 EXCLUSION OF PUBLIC AND PRESS**

*RESOLVED* that under section 100I 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 paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

*Councillors Barker and Gerard left the meeting at 8.50pm.*

**LIC55 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The driver had surrendered his licence and there was nothing for the Committee to consider.

**LIC56 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Enforcement Officer presented his report to the Panel.

The driver had applied to this authority on 7 June 2018, for the grant of a private hire/hackney carriage driver's licence. On the application form the driver answered 'no' to the question 'have you ever been refused, or had revoked or suspended, a hackney carriage or private hire driver's licence?'

Following a meeting with the driver, the Licensing Officer checked the licensing records and found that the driver had a previous licence suspended in 2011; the licence was then revoked by the Licensing and Environmental health Committee in 2012. Furthermore, the driver was found guilty of four offences on 14 August 2012, and found guilty on 9 April 2013 of driving a private hire vehicle without a licence.

Members considered whether the driver was a 'fit and proper' person to be issued a licence, in light of his failure to disclose the fact that his licence had previously been suspended and revoked. In addition, he had also failed to disclose the relevant licensing convictions on his application.

The Chairman read the decision notice.

## Decision Notice

The driver's application dated 7<sup>th</sup> June 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd carrying out school contract work.

The Council's standard application form asks a number of questions about an applicant's antecedent history. A copy of the form completed by the drivers is before us and he has been provided with a copy prior to the hearing today.

One of the questions is "Have you ever been refused or had revoked or suspended a hackney carriage or private hire driver's licence?"  
The drivers answered no to this.

Another is, "Have you ever been convicted of ANY offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?"

The driver answered that he was convicted of drink driving in 2002 and had a 12 month disqualification which was reduced to 8 months. He also confirmed that he had been convicted of failing to stop after an accident and he received five penalty points on his licence.

On 13 July 2018, the driver attended a right to work check with the Licensing Officer. In this meeting the Officer went through the drivers' paperwork and his application form. During the meeting he was asked whether he had ever been a licensed driver before, and he stated that he had been previously licensed with Uttlesford.

After the meeting the Licensing Officer checked the department's records and discovered that the driver previously had had a private hire/hackney carriage driver's licence that had been revoked by this Committee. At a subsequent meeting with the officer the driver stated that he remembered attending Committee but that his licence had elapsed and was not revoked, drivers having got caught up in problems between the driver's former employer and UDC. This was noted down on the application form.

In fact, the Council's records show the driver appeared before the Licensing and Environmental Health Committee on 30 March 2011 and his licence was suspended for 28 days between 2-30 May 2011 because in breach of condition 18e of Appendix G of the Council's Licensing Standards the driver had failed to contact notify the Council within seven days of his conviction for failing to stop and report an accident. He was invited in on two occasions for a meeting with the former Assistant Chief Executive Legal, but on both occasions did not attend or contact the Council. Therefore, the former Assistant Chief Executive Legal did refer the drivers' licence to Committee which resulted in the significant length of the suspension.

On 28 June 2012, the drivers' private hire/hackney carriage driver's licence was revoked by the Licensing and Environmental Health Committee. He did not

appeal this decision. The background to this is set out in detail in the report before us today and the driver has received a copy of this: briefly, however, the matters before the Committee included carrying passengers in unlicensed vehicles, when the journeys had not been booked through a licensed operator, failing to wear his driver's badge, smoking in the vehicle contrary to the Health Act 2006, possession of cannabis, (for which the drivers received a Police caution), and failing to notify the Council of the caution and of a change of address, contrary to conditions 18a and c of Appendix G of the Licensing Standards for Drivers.

On 14 August 2012, the driver was convicted in his absence for two counts of failing to wear his driver's badge, one count of driving a PHV not displaying the licence plate, and of the Health Act offence. He was fined £600 in total, ordered to pay costs of £606.80 and a £15 victim surcharge.

Later that year, on 19 November 2012, the driver was caught driving a licensed private hire vehicle without a PHV licence and without insurance. He twice failed to attend an interview under caution in respect of the offence of driving a private hire vehicle without a licence. He was subsequently convicted of this offence in absentia on 09 April 2013. He was fined £400, ordered to pay costs of £490.92 and a victim surcharge of £40.

The Enforcement Officer attempted to telephone the driver on 09 August 2018, to discuss the reasons why the driver did not disclose this information on his application form but did not get a response. Making a false statement to obtain a licence is an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976, but although the Environmental Health Manager (Protection) has deemed it not in the public interest to prosecute the driver his application was referred to this Committee for determination.

This application has already been adjourned to enable the driver to attend. Both the Enforcement Officer and 24 x 7 Ltd have gone above and beyond the call of duty to make him aware of this hearing, However, he has not attended, and sadly we cannot help but note that there is a long history of breaches of the Council's licensing conditions and of relevant offences – failure to wear the driver's badge, failure to display vehicle plates, carrying passengers knowing the journey has not been lawfully pre-booked, plus of course the Health Act and Misuse of Drugs Act convictions.

Though the driver is a rehabilitated person in respect of these matters since they were punished by way of fines only, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before us. Our primary function is the protection of the public and we consider that we have no alternative but to refuse this application since we do not believe the driver to be a fit and proper – safe and suitable – person to hold a licence, given his history of failure to comply with the requirements of one.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The drivers will receive a letter from the Legal Department explaining this.

The meeting ended at 9.05pm.

## **Public Speaking**

Doug Perry said the CCTV scheme was in need of urgent review and a consultation was required with all stakeholders; he hoped ULODA would be closely involved.

In relation to the Licensing Review that was being undertaken by the Council, Mr Perry expressed concern regarding the way in which the Council dealt with disqualified drivers. He said he was not happy that a driver, regardless of their offence, would not be granted a licence for three years following disqualification. He hoped the review would give due prominence to the principle of 'each case to be judged on its own merits' and that this would be reflected in the new Licensing Policy that was currently being drafted.

Barry Drinkwater also spoke on the Licensing Review. He hoped ULODA would be given an opportunity to comment on the findings of the review before the definitive report was presented to Committee at a later date. He highlighted the example of 'knowledge testing' and said it would be inappropriate for drivers who worked on school contracts, often travelling the same journey from home to school each day, to be subject to these new tests. He said he was aware of at least one neighbouring authority which exempted school drivers from such knowledge testing.

Mr Drinkwater congratulated Andy Mahoney, Managing Director of 24x7 Ltd, who had been nominated for two Essex Business Excellence Awards (EBEA) – Entrepreneur of the Year and Not-for-Profit Organisation award – and wished him well for the awards ceremony on 2 October. At the invitation of the Chairman, Mr Drinkwater read out the statement Mr Mahoney had provided to the event organisers of the EBEA.

The Chairman thanked both speakers for their statements and congratulated Mr Mahoney on his nominations.

With regards to the CCTV scheme, the Chairman said there would be partnerships between the trade and the Council. If the scheme was to go ahead, 2,800 cars would be outfitted with CCTV. However, the Licensing Policy review was the Council's priority for the time being.

The Chairman said it would be right for the trade to have their say on the revised Licensing Policy and confirmed ULODA would have an opportunity to comment. In relation to the proposed knowledge testing for school contract drivers, he said it was essential that they too underwent these tests. Safety would always be the principal concern of the Council's licensing policy and it would be dangerous not to test drivers who were responsible for transporting children.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on TUESDAY, 30 OCTOBER 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)  
Councillors M Foley, A Gerard and E Hicks

Officers in attendance: A Bochel (Democratic Services Officer), M Chamberlain  
(Enforcement Officer) and E Smith (Solicitor)

**LIC57 EXCLUSION OF THE PUBLIC AND PRESS**

*RESOLVED that under section 100I 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 paragraphs 1 and 2 part 1 of Schedule 12A of the Act.*

**LIC58 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 3**

Members considered and noted the report.

**LIC59 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 6**

The Chairman moved Item 6 forward in the proceedings because the driver was attending.

The Chairman introduced the Panel and explained procedure to those present.

The Enforcement Officer gave a summary of the report.

Members viewed evidence recorded by the complainant against the driver which showed him speeding on the M11.

The driver said he wanted to apologise to the Committee and had written to the complainant to apologise as well. As soon as he had seen he was above the limit, he had slowed down. Work had been busy that night and he had been eager to move on to his next job. Work as a taxi driver was important to him and he did not want to lose his licence.

In response to a Member question, the driver said he had not felt under pressure from his employer to finish that particular job as soon as possible.

At 10.40, the Committee retired to make its decision.

At 11.20, the Committee returned.

The decision was read to the driver.

## DECISION NOTICE

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence number PH/HC2765 dated 31<sup>ST</sup> May 2018 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 30<sup>th</sup> April 2021. He is currently employed by 24 x 7Ltd as an airport driver and the complaint before us was referred to the Council by them.

On 16 August 2018, the driver accepted a journey from Stansted Airport to Little Chesterford commencing at 02.18 hours. The journey ended at 02.44 hours. The passenger later made a complaint to 24x7 Limited that the driver was driving in excess of 100mph with the passenger on board. The company apologised to the passenger and provided a full refund.

Martin Cockburn, a manager at 24x7 Limited at Stansted Airport used their tracking information which proved that the driver was driving up to 104mph. The tracking device also showed that the driver was consistently driving at well above the 70mph speed limit for motorways.

Our attention has been drawn to the MoJ Speeding (revised 2017) Sentencing Guidelines which state that if a speed limit is 70mph, and the recorded speed is 101mph or above then the driver could be disqualified for a period of between 7-56 days or receive six penalty points. The Court can then consider further adjustments for any aggravating or mitigating factors when sentencing. One of these aggravating factors is 'driving for hire or reward.'

The Enforcement Officer carried out a telephone interview with the driver on 04 September 2018. His notes of the conversation are before us, and we observe that the driver pointed out the following matters:

- He had held a DVLA licence since 2008 and it is currently clean.



- In 2010 he received three penalty points for speeding doing around 80mph in a 70mph zone. This was the only time that he was caught speeding.
- The driver said that he believed that there were three passengers on board during the journey in question.
- The speeding took place on the M11 northbound and the driver said that the road was quite clear.
- He stated that he was speeding to get the passengers home and when he realised how fast he was he slowed down. The passenger did not apparently ask him to slow down.
- The driver apologised for his actions.

We have read the papers before us and we have heard from the driver. We note his contrition but we cannot overlook the speed at which he was travelling or the admissions he made to the Enforcement Officer. Nor can we overlook the fact that the passengers felt it necessary to take film footage of the journey and thereafter made a formal complaint.

Our attention has been drawn to the Government's Sentencing Guidelines for speeding offences. Though we are not bound by them, we accept that this offence is at the higher end of the scale and is aggravated by the fact that the driver was driving for reward.

He has raised the question of hardship, but unfortunately this is something we cannot take into consideration.

Paragraph 8 of Appendix G to the Council's Licensing Standards for Drivers requires drivers to

"Take all reasonable steps to ensure the safety of passengers"

The primary function of this Committee is to ensure the safety of members of the travelling public. In driving at the speed he was recorded as so doing, the driver clearly ignored this obligation, and though so far as we are aware the Police

have not become involved or a Notice of Intended Prosecution served, he was nevertheless committing a serious offence and therefore in the interests of the proper protection of the public we consider that we have no alternative but to revoke the driver's licence with immediate effect under S61 (b) of the 1976 Act as he is no longer a fit and proper person to hold it.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The driver will receive a letter from the Legal Department explaining this.

LIC60

#### **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 4**

The Committee considered the report.

The decision was read to those present.

#### **DECISION NOTICE**

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC 0205 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. She has been licenced in Uttlesford since 3<sup>rd</sup> August 2015 and her current licence is due to expire on 31<sup>st</sup> July 2019. Her last known driving role was with 24 x 7 Ltd and she left their employment over two years ago. The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. Also required is a three year DVLA mandate to enable annual checks to be made as part of the due diligence process. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver's last group 2 medical certificate, DBS check and DVLA mandate all expired on 31<sup>st</sup> July 2018..

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the

month when the check expires. The reminders for medicals are typically sent out on the 15<sup>th</sup> day of the month preceding the expiry of that check.

Correspondence sent by post was returned by the Royal Mail, so the driver was contacted by email on 20<sup>th</sup> September 2018 and was told that if she wanted to remain licensed then she must provide these documents by 20<sup>th</sup> September 2018. She has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. She will receive a letter from the Legal Department explaining this.

LIC 61 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 5**

The Committee considered the report.

The decision was read to those present.

DECISION NOTICE –

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC 0506 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since 9<sup>th</sup> April 2015 and his current licence is due to expire on 31<sup>st</sup> March 2019. His last known driving role was with 24 x 7 Ltd.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. Also required is a three year DVLA mandate to enable annual checks to be made as part of the due diligence process. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver's last group 2 medical certificate, DBS check and DVLA mandate all expired on 31<sup>st</sup> March 2018..

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the month when the check expires. The reminders for medicals are typically sent out on the 15<sup>th</sup> day of the month preceding the expiry of that check.

Correspondence sent by post was returned by the Royal Mail, so the driver was contacted by email on 21<sup>st</sup> August 2018 and was told that if he wanted to remain licensed then he must provide these documents by 28<sup>th</sup> August 2018. He has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. She will receive a letter from the Legal Department explaining this.

LIC 62 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 7**

The Committee considered the report.

The decision was read to those present.

**DECISION NOTICE**

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC 1306 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He has been licenced in Uttlesford since 17<sup>th</sup> August 2015 and his current licence is due to expire on 31<sup>st</sup> July 2019. His last known driving role was with Greenair Cars who advised the Council his employment with them had ended.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. A fresh DVLA mandate is required every three years to enable annual DVLA checks to be undertaken as part of the due diligence process. All these checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver's last group 2 medical certificate, DVLA mandate and DBS check all expired on 31<sup>st</sup> July 2018..

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the

month when the check expires. The reminders for medicals are typically sent out on the 15<sup>th</sup> day of the month preceding the expiry of that check.

The driver was contacted in writing on 25<sup>th</sup> September 2018 and was told that if he wanted to remain licensed then he must provide these documents by 11<sup>th</sup> October 2018. He has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. He will receive a letter from the Legal Department explaining this.

LIC63 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE - ITEM 8**

The Committee considered the report.

The decision was read to those present.

DECISION NOTICE –

The application before the Panel today is for the suspension or revocation of the driver's joint private hire/hackney carriage licence no PH/HC 0531 in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. She has been licenced in Uttlesford since 4<sup>th</sup> March 2015 and her current licence is due to expire on 28<sup>th</sup> February 2019. Her last known driving role was with Excellent Connections Ltd t/a Fargolink.

The Council requires all drivers to undergo an enhanced Disclosure and Barring Service (DBS) check and group 2 medical when they apply for a licence and every three years after that. These checks assist the Council in establishing whether an individual is a 'fit and proper' person to hold a licence. The driver's last group 2 medical certificate expired on 12<sup>th</sup> February 2018 and her DBS check on 28<sup>th</sup> February 2018..

Normal practice at UDC is to send out reminder letters to drivers for DBS checks that are due to expire on the first working day of the month which precedes the month when the check expires. The reminders for medicals are typically sent out on the 15<sup>th</sup> day of the month preceding the expiry of that check.

The driver was contacted in writing on 26<sup>th</sup> September 2018 and was told that if she wanted to remain licensed then she must provide these documents by 12<sup>th</sup> October 2018. She has not done so.

Condition 12 of Appendix A of the Council's Licensing Standards requires drivers to meet "...Group 2 medical standards as published by the Dept of Transport."

Compliance with this standard is a legal requirement, and without a certificate we have no means of knowing whether this requirement is satisfied. This Committee considers that failure to provide an up to date medical or DBS check is a breach of Council policy; the checks are vital to establish that a driver is medically fit enough to drive, and has not received any criminal convictions in the period since their last DBS check. Lacking that information, and mindful of the paramount importance of public safety, we are not satisfied that the driver is a fit and proper person to hold hackney carriage and private hire licences and therefore revoke them, with immediate effect.

The driver has a right of appeal against this decision to the Magistrates Court, and that any such appeal must be lodged within 21 days. Normally, the revocation would come into effect following the end of the appeal period, but since the revocation is because of failure to supply a medical certificate in the interests of public safety, this period of grace will not apply. She will receive a letter from the Legal Department explaining this.

The meeting ended at 11.25.



**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on TUESDAY, 6 NOVEMBER 2018 at 7.30 pm**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, J Davey, A Gerard and S Morris

Officers in attendance: T Cobden (Environmental Health Officer - Commercial),  
B Ferguson (Democratic Services Officer), E Smith (Solicitor)  
and A Turner (Licensing Team Leader)

Also present: R Ellis, D Perry and R Sinnott (Uttlesford Licensed Operators and Drivers Association – ULODA).

**LIC64 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence.

**LIC65 PUBLIC SPEAKING**

Doug Perry and Robert Sinnott spoke to the Committee. Statements were also read out on behalf of Andy Mahoney and Barry Drinkwater. Summaries of all statements are appended to these minutes.

In response to these statements, the Chairman said the increased percentages referred to by the public speakers were misrepresentations of the reality of the situation. He said that even if the proposals came into effect, Uttlesford would remain one of the most inexpensive licensing authorities in the country. He emphasised that the officer recommendation before Members was not the final determination of the variation in licensing fee charges; this would only occur after the advertisement period of 28 days had ended, which was in effect a consultation, and the Committee would reconsider the proposals if any objections were received. He said the Committee had a duty to the tax payer to recoup administration costs when processing licences, which had become higher due to the increase in number of driver checks carried out to enhance public safety. He said the number of recent revocations were proof that that these additional checks were necessary. In summary, he assured ULODA members present that consultation would occur.

**LIC66 FEES FOR DRIVERS, HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES AND PRIVATE HIRE OPERATORS**

The Committee considered the Licensing Team Leader's report, which stated that the current fees charged did not cover the costs incurred by the service in issuing licences. It was anticipated that the current fee structure would result in an under recovery of costs relating to taxi licensing of over £100,000 for 2018-19. The proposed increase to fees were considered appropriate to recover the

administration and associated costs of the service, in light of deregulation and, consequentially, the large increase in applications received that required proper assessment to ensure that the safety of users of hackney carriages and private hire vehicles was not compromised. Subject to consultation, the proposed change to licensing fees would come into effect on 1 April 2019.

In response to a Member question, the Licensing Team Leader confirmed that this was an annual process, although it was being carried out earlier than in previous years.

Councillor Gerard said even with the proposed increase, the fees would be competitive and were necessary to ensure the proper checks were carried out and to maintain public safety.

Councillor Barker asked whether the licensing department could maintain its current productivity without an increase in resources.

The Licensing Team Leader said if fees were not raised to cover the costs of increased resources, then all licences would take longer to process and the service would not be able to function properly.

RESOLVED to:

- 1) Approve the fee structure proposed in Appendix B to come into effect on 1 April 2019
- 2) That the fees in respect of Hackney Carriage and Private Hire Vehicle Licences and Private Hire Operators Licences be advertised for a period of 28 days in at least one local newspaper circulating in the district.
- 3) If any objections are received then Members will need to meet to consider the same and must then set a further date (not being later than two months after the first) on which the variation to fees will come into force with or without modification. They will be reported back to the Licensing and Environmental Health Committee for consideration.

The meeting ended at 8.00pm.

## **Public Speaking**

Doug Perry said the proposed rise in fees and charges was astronomic, ranging between 11.9% and 150% for the next financial year, and strongly urged Members to vote against them until Council officers met with the Trade to discuss them in detail. He asked why there had been no consultation with the Trade as there had been in previous years when he was Chairman of the Licensing Committee. He said for a consultation to be 'proper' it must be undertaken at a formative stage and requested Members to defer the decision.

Richard Ellis read out a statement on behalf of Barry Drinkwater. The statement said that in the past the Trade was properly involved in forming licensing policy and played an important check and balance role, as demonstrated by participation in Licensing Task Groups and joint annual reviews. This was no longer the case. The Trade wanted to understand the reasons for the licensing team's under resourcing and invited Members to give time and consideration to the Trade's statements.

Doug Perry read out a statement on behalf of Andy Mahoney. The statement asked Members to uphold an agreement made between the Trade and Council leadership back in 2010, which stated that each set of annual Licensing budgets would be discussed with the Trade. The Trade had also agreed for UDC to repay the £138,000 surplus without interest and now that the money was repaid, the 'shutters were coming down' on this working relationship. He said there was no risk in deferring the decision and urged Members not to vote until the Trade was properly consulted.

Robert Sinnott said a decade ago the Trade and Council used to enjoy a collaborative and co-operative relationship when reviewing licensing costs and agreeing fees for the year ahead. He said this had now stopped, without consultation, and that this was disrespectful to those who had worked hard in the past to establish this working relationship. Furthermore, until details had been discussed with the Trade, and the assertions in the report substantiated, he would not be able to trust the proposals put before Members. He asked the Committee to defer their decision and said if this was approved, ULODA would consider approaching the Local Government Ombudsman.

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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on MONDAY, 19 NOVEMBER 2018 at 10.00 am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker and A Gerard

Officers in attendance: A Bochel (Democratic Services Officer), E Smith (Solicitor) and  
A Turner (Licensing Team Leader)

Also present: G Ashford and V Powell (Essex Police), S Chowdhury and W  
Chowdhury (Applicants), S Gibson (Licensing Agent for the  
Applicants).

**LIC69 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Councillor Gerard said he had received texts from one of the previous owners of the Queen Victoria, lobbying him for his support. He had not replied to them.

Councillor Chambers said he had been lobbied by a fellow member on behalf of one of the previous owners of the Queen Victoria. He had declined to discuss the matter.

**LIC70 APPLICATION FOR A PREMISES LICENCE - QUEEN VICTORIA GREAT  
DUNMOW**

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Team Leader gave a summary of the report. The application was for a new premises licence in respect of The Queen Victoria, 79 Stortford Road, Great Dunmow, CM6 1DL. Representations had been made by Essex Police in response to this application so therefore this matter had been referred to the Committee for adjudication.

A previous licence had been held at these premises by different persons. This licence was revoked by the Licensing & Environmental Health Committee on 11 September 2018. The previous licensees were directors of the Applicant's limited company and scrutiny of the company records at Companies House shows they resigned within 7 days of the licence revocation.

V Powell summarised the case made by Essex Police. The application for a premises licence was being made by Aldbrook Ltd, the same legal entity which had owned and operated the premises in question for a number of years, and whilst doing so, on four separate occasions, had been found to be employing illegal workers. Both applicants had previously had close business links with the previous management of the premises. In addition, *East Lindsey District Council v Hanif* determined that Licensing Panels could make decisions based on the

prospect of future harm and the need to avoid that eventuality. The Police felt Uttlesford District Council could do so here.

The Licensing Agent said that contrary to the Police's report, the applicants were not related to the previous management, and the previous shareholders now had nothing to do with the business.

In response to questions from members, the Licencing Agent explained that the sale price of the business was as low as £12000 because the new owners were taking on the costs of paying the fines for immigration expenses, the repair of the thatched roof, and the risk of the business not getting a licence.

In response to questions from members, the majority shareholder of the Queen Victoria, S Chowdhury said he owned a taxi business in London called Comfort Transport Ltd. He had 58 people working for him. He applied the same immigration checks he used at that business on his employees at the Queen Victoria. He had brought documentation with him to prove this.

The Licensing Agent said the Police had noted that W Chowdhury's personal licence was held under an address in Tower Hamlets despite the fact his home address was listed in Cambridge. He said this was because W Chowdhury divided his time between the two addresses.

In response to questions from members, S Chowdhury said he was the day to day manager of the Queen Victoria.

The Chairman adjourned the meeting at 10.50.

The Chairman readjourned the meeting at 10.55.

In response to questions from members, the applicants said the lease on the Queen Victoria ran out three months ago. The landlord had agreed to give them the lease for 25 years so long as they paid for the roof repairs.

In response to questions from members, the applicants said that the previous owner, Z Chowdhury, would be paid an additional £15000 if the Queen Victoria was given a premises licence. That was likely to be why he had been lobbying Members. This agreement had not been written down, and was verbal only.

V Powell said the application felt like a sham, and did not think it was certain that proper licencing procedure would be followed if the applicants were given a licence for the Queen Victoria.

The Licencing Agent said the applicants would not put their other businesses at risk by not following the proper licencing procedure. They had proven they could run other businesses.

At 11.25, the Committee retired to make its decision.

At 1.15, the Committee returned.

The Chairman read the decision to those present.

#### DECISION NOTICE – QUEEN VICTORIA, STORTFORD ROAD, DUNMOW

The application before the Panel today is for the grant of a new premises licence of the Queen Victoria, Stortford Road, Dunmow.. The application is dated 26<sup>th</sup> September 2018 and is made by Aldbrook Limited

Representations have been made by Essex Police and accordingly the matter has been referred to us for determination.

We have had sight of a detailed report and have considered the extensive background papers, including:-

- (a) Premises licence application (Appendix A)
- (b) Plan of premises (Appendix B)
- (c) Representation from Statutory consultee (Essex Police) (Appendix C)
- (d) Location map of premises (Appendix D)
- (e) A bundle of supplementary information from the Police including full set of the information held by Companies House in respect of the applicant company
- (f) Revised Guidance issued under section 182 of the Licensing Act 2003
- (g) Uttlesford District Council Statement of Licensing Act 2003 Policy 2017-22

We have also seen some documents submitted late by the applicant's agent Stuart Gibson regarding the share transfers. This includes P45s for the outgoing directors but we are mindful of the fact that there is no legal requirement whatsoever for a director to be an employee and so we give these very little weight.

As prescribed by the Licensing Act 2003, where an applicant submits documentation supporting a premises licence application, then an operating

schedule must be submitted. This demonstrates how the licensing objectives will be met and also outlines what licensable activities are sought.

These are set out in part M of the application form ( Appendix A of the bundle before us).

The licensable activities being sought on the application are listed below:

(J) Supply of Alcohol for consumption on the premises (on the premises)

Monday to Saturday 10am - 11pm

Sunday 10am - 10.30pm

(L) The opening hours of the premises

Monday to Saturday 10am – 11.30pm

Sunday 10am - 11pm

Copies of the application have been served on all of the statutory bodies, and has attracted representations from Essex Police based on the Crime and Disorder objective. Details of these representations can be seen at Appendix C and the supplementary documents and we have also heard from Mrs Powell and Mr Ashford from Essex Police. We also heard from Mr Gibson, the applicant's licensing agent and from Messrs Shawkat and Wazadur Chowdhury themselves.

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

- a) The prevention of crime and disorder
- b) Public safety
- c) The prevention of public nuisance
- d) The protection of children from harm

The options that are available to this Committee are to



- Grant the application
- Modify the application by inserting conditions
- Reject the whole or part of the application

When determining an 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. The most recent version is dated April 2018 and we are mindful of the contents thereof. It includes new guidance in respect of immigration issues.

Paragraph 2.6 says The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters.

Paragraph 11.26 relates to reviews, but can be taken into consideration in determining new applications - 'Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder. '

Paragraph 11.27 says 'There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;

- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- **for employing a person who is disqualified from that work by reason of their immigration status in the UK [our emphasis];**
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol. ‘

The relevant sections of the Council’s Licensing Policy are:

3.3 The prevention of crime includes the prevention of immigration crime, and the Licensing Authority will work with Home Office Immigration Enforcement in respect of these matters.

The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events [our emphasis].**

3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour
- **Illegal working**

#### Control Measures

3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises
- Training and supervision of staff
- Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA (British Beer and Pubs Association) Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 25 policy)
- Provision of effective CCTV and mirrors in and around premises
- Employment of Security Industry Authority licensed door staff
- Provision of toughened or plastic drinking vessels

- Provision of secure, deposit boxes for confiscated items ('sin bins')
- Provision of litterbins and other security measures, such as lighting, outside premises
- Membership of local 'Pubwatch' schemes or similar organisations
- **Right to work checks on staff and retention of documents**

Should the Committee be minded to impose conditions on the grant of a licence, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received. This is made clear in paragraphs 10.8 and 10.10 of the Home Office Guidance. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

Specifically, that guidance provides as follows:-

10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises.

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided...Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed

premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions.

We have heard from Mrs Powell, who presented the Police case supported by Mr Ashford.

We have also heard from Mr Gibson on behalf of the applicant company and from the two Messrs Chowdhury. Unfortunately, the latter have failed to convince us regarding a number of matters, and we are extremely concerned regarding whether or not the sale of this business is genuinely an arms length transaction between unconnected persons. On the balance of probabilities we believe that it is not.

The previous owner, Mr Ziaul Chowdhury, has tried to lobby some of our number. Why? The financial information before us makes no mention of the ownership of and payment of the outgoings upon the physical premises at Stortford Road. The person whom Mr S Chowdhury believes to be the landlord, a Mr Hussein from Turkey, is not the registered proprietor of the building and there is no note of any leasehold interests upon the title at HM Land Registry. Nobody undertakes works as substantial as the rethatching of a roof without having a secure legal interest in the property. A transfer of shares in a limited company that does not own its operating assets is not the transfer of a business and neither Mr S nor Mr W Chowdhury could give proper explanations for this failure. Nor do we believe that Mr W Chowdhury can act as designated premises supervisor for two sets of premises AND work as a taxi driver, and we recall from the previous hearings before us that Mr Z Chowdhury mentioned his dedication of time and effort to a restaurant business in Sawston as being why he neglected certain aspects of the management of the Queen Victoria.

We have considered all the material before us very carefully indeed, including the documents put before us for the first time today, and we are mindful of the history of these premises vis a vis the licensing authority over the past six months. To recap, the applicant is Aldbrook Ltd and that company has at all material times operated a business from these premises trading as Jalsa Ghar. This company has employed the workers in this business and has accounted to HMRC for taxes. Aldbrook itself acquired the assets of its business from the

liquidator of a company called Jalsa Ghar (UK) Ltd, also based at 79 Stortford Road, of which the outgoing licensees, Ziaul Choudhury and Omar Shorif, were shareholders. They became directors of Aldbrook between December 2011 and February 2012, while remaining as shareholders until Autumn 2018.

The share transfers of which we have heard today took place very shortly after the revocation of the previous licence. The transfer of shares in a company that does not own the operating assets of the business does not necessarily a sale of that business make, plus the P45s submitted in respect of the outgoing directors have no probative value whatever. A director does not have to be an employee and the fact that a person is now holder of shares does not mean they are the true beneficial owner of them. No prudent businessman would enter into a contract under which a further payment is due upon the occurrence of a contingency without that agreement being evidence in writing, and Aldbrook's financial statements make no mention of either a lease of the premises or payment of a substantive rent. In the light of all this, and the inability of Messrs Chowdhury to answer our questions, reinforces the feeling that this is not a true sale to bona fide purchasers for value at arms length..

Continuing, we note there was also a third director, Fazul Bari Chowdhury, who remained in post throughout and is recorded as being resident at the same address as Hadayouth Ahmed Chowdhury, who also figures in the history of these premises, see post.

Ziaul Choudhury held a 75% shareholding giving him significant control. On 19<sup>th</sup> September, again within the appeal period for the revocation of the licence, a 75% shareholding was acquired by Shawkat Karim Chowdhury, notification being given to Companies House in form PSC01 on 27<sup>th</sup> September. He has also been appointed a director.

Further searches carried out by the Police against SK Chowdhury at Companies House show that he is also a director of Comfort Transport (UK) Ltd. We have learned today that that company is a taxi firm licensed by TfL. That company's other director is Hadayouth Ahmed Chowdhury (see above) who unsuccessfully applied for a transfer of the premises licence to him on 21<sup>st</sup> August 2018 in the hope of forestalling the 11<sup>th</sup> September review. Mr H Chowdhury worked in the

business in a management role at that time though we are told he has ceased to do so.

Similar directorship searches against Ziaul Choudhury revealed involvement with another company called Karhold Ltd: a co-director of this company was one Wazadur Chowdhury, who holds the premises licence for Kaz's Indian Restaurant, Sawston, which is the premises in Sawston referred to by Mr Z Chowdhury in evidence before us in September. The manner in which Mr W Chowdhury acquired that business from Mr Z Chowdhury is identical to the way in which this business has been transferred.

This Committee's primary function is the protection of the public. Though we are not a Court and the standard of proof before us is the civil one of the balance of probabilities, we are satisfied that the Police have made out their case and that this application does not relate to a wholly new business; at all material times this business has been operated by closely connected persons. The corporate veil is being used to provide a structure whereby these associated persons may trade in common. We cannot ignore the history of the premises and observe that businesses operated by these people have on several occasions been sanctioned for immigration offences. There have been ample opportunities for lessons to be learned. We have no guarantee whatsoever that they will be, and furthermore an attempt has been made by Mr Z Chowdhury to lobby members of this Committee. This aspect of the matter has been referred to the Council's Monitoring Officer.

This only serves to reinforce the Police contentions, and Mr S Chowdhury did have to admit that there is indeed a verbal agreement for the payment of a further £15,000 to Mr Z Chowdhury if a licence is granted today. He further admitted that the business was worthless without a licence which to our minds poses yet further questions regarding the bona fides of this application.

I repeat, we have taken into account everything we have both read and heard and at this point I repeat the provisions of the April 2018 edition of the Home Office Guidance. For the first time, it **specifically** includes immigration offences in the list of matters Licensing Committees are required to take into consideration, and says:-

“There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of licensed premises for.....

- Employing a person who is disqualified from that work by reason of their immigration status in the UK.

This Guidance repeats and reinforces the ratio of the decision of Mr Justice Jay in the *East Lindsey* case [2016] EWHC 1265, where he states

“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder....the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence....criminal convictions are not required.” We respectfully adopt His Lordship’s conclusion albeit in the context of the grant of a new licence. The directors and shareholders of Aldbrook Ltd are not fit and proper people to hold a licence.

It is very clear that this closely linked group have traded collaboratively from these premises since before 2000. It is equally plain that they will continue to do so and that nothing has changed. We are aware that the Home Office guidance permits this Committee to use its powers to deter others, and this is a case where we should do so. This application is a flagrant abuse of the law, and like the Police, we take this matter very seriously.

Accordingly this application is refused.

There is a right of appeal against this decision which must be exercised within a period of 21 days. The Applicant will receive a letter from the Legal Department explaining this.





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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, CB11 4ER, on TUESDAY, 27 NOVEMBER 2018 at 7.30 pm**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, J Davey and E Hicks

Officers in attendance: A Bochel (Democratic Services Officer), T Cobden (Environmental Health Manager - Commercial), O Rawlings (Licensing Consultant), E Smith (Solicitor), A Turner (Licensing Team Leader) and M Watts (Environmental Health Manager - Protection)

**LIC70 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies were received from Councillors Foley, Gerard, Goddard and Morris.

**LIC71 REVIEW OF UTTLESFORD DISTRICT COUNCIL'S TAXI LICENSING POLICIES**

In response to statements made by public speakers, the Chairman said the decision by Members would be whether or not the review of policy was sent out for consultation. This would not mean a final decision on the content of the policy had been made. Members of the public, including the trade, would have a chance to respond to this consultation. However, it was important for Members to have input first. There was no need for another task group to be set up when a consultation would do the same work.

The Licensing Consultant gave a summary of the report and each of the recommendations.

In response to a Member question, the Licensing Consultant said new driver training and testing would not require applicants to take a specific language test. However it would be necessary for applicants to have a basic level of English in order to perform to an acceptable standard in the competency test.

In response to a Member question, officers said applicants were obliged to reveal any information about themselves which might cause officers to believe they were not a fit and proper person to be a licensed taxi driver. This included acquittals. This was because the Committee's decisions had to be made on the balance of probability, as opposed to establishing whether a person was not fit and proper beyond all reasonable doubt. Wording asking applicants about previous arrests and acquittals would be included on the application form if this aspect of the policy review was approved.

In response to a Member question, the Environmental Health Manager (Commercial) said the £85 cost of a driving proficiency test was a comparatively small amount over the period of time that it would be relevant for.

In response to statements by members of the public, the Licensing Consultant said applications for vehicles which did not meet the standards of the vehicle age and emissions policy would still need to be considered on the vehicle's own merits, and vehicles that contravened the policy could still be approved with good reason.

Councillor Barker said he found it problematic that the policy stated a vehicle should be in 'near perfect condition'.

The Chairman said further meetings would be held with the trade if Members approved the recommendations to send the policy review out for consultation.

RESOLVED to approve that the policy review proposals be sent out for an 8 week consultation with the licensing trade and the public.

*B Drinkwater, D Perry and A Mahoney spoke on this item. Summaries of their statements are appended to these minutes.*

The meeting ended at 8.45.

#### Summary of Statement by D Perry:

D Perry said the trade were disappointed that they had not been invited to engage on the policy review before this presentation. The Council's Constitution acknowledged that consultation with its citizens was important. The report did not mention any proposed changes with regard to CCTV cameras in licensed vehicles. The trade was pleased, in principle, to see driver training and education as a recurring theme in the review. D Perry reminded those present that ULODA's mission was to unite the trade through education, information and compliance'.

#### Summary of Statement by B Drinkwater:

B Drinkwater said the informal forum held between officers, Members and the trade to discuss proposals on Licensing fees was an excellent example of collaborative working. ULODA strongly felt that a Licensing Policy Task Group should be appointed to advise on policy changes. There was also a concern that drivers would have to pay to go through 'further hoops' which may be a barrier to entry for them. The trade's overarching concern was to have 'meaningful, constructive and convivial collaboration with officers and members'.

#### Summary of Statement by A Mahoney:

A Mahoney said he believed the minimum standard for drivers was set so high that it might create a shortfall of new applicants, and add to the length of time it would take for applications to be approved. School contract work was the largest area of work carried out by 24/7 Ltd, much of which was focused on special needs. However vehicles adapted to transport children with special needs would

not be approved under the new age and emissions policy. 24/7 Ltd already ran their own training and testing, and it was important not to over-train drivers.

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**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON  
WALDEN, ESSEX CB11 4ER, on TUESDAY, 18 DECEMBER 2018 at 10.00  
am**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker, E Hicks and J Loughlin.

Officers in  
Attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic  
Services Officer), Jo Jones (Licensing Officer) and E Smith  
(Solicitor).

Also Present: The drivers in relation to items 4, 5 and 6; B Drinkwater (ULODA -  
representing the driver in relation to item 5).

**LIC72 EXCLUSION OF THE PUBLIC AND PRESS**

*RESOLVED that under section 100I 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 paragraphs 1  
and 2 part 1 of Schedule 12A of the Act.*

**LIC73 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER  
APPLICATION**

The Chairman brought Item 6 forward in proceedings for the benefit of the driver  
present.

The Chairman introduced the Panel and explained procedure to the driver.

The Enforcement Officer gave a summary of the report.

The driver had previously held a private hire/hackney carriage driver's licence  
with Uttlesford District Council from 16 February 2017 until it was revoked, due  
to no fault of his own, on 16 August 2018. It was revoked as he no longer met  
Group 2 medical standards following a heart attack.

The driver had now satisfactorily completed a new group 2 medical on 1  
November 2018 and had reapplied for his licence. To grant the licence would be  
contrary to the Council's licensing standards, as the driver's licence had been  
revoked within the past three years. Members were reminded that they could  
make an exception to this policy, but would need to give clear reasons for doing  
so.

At 10.15, the Committee retired to make its decision.

At 10.21, the Committee returned.

The decision was read to the driver.

### **Decision Notice**

The driver's application before us today dated 7<sup>th</sup> November 2018 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 Ltd on school contract runs.

The driver previously held a licence with UDC granted on 16<sup>th</sup> February 2017. It was revoked with immediate effect by the Environmental Health Manager (Commercial) under delegated powers on 16<sup>th</sup> August 2018 because the driver had suffered a heart attack and was therefore medically unfit to drive. No possible blame can attach to him.

He passed his Group 2 medical examination on 1<sup>st</sup> November.

As the driver had his previous licence revoked in August this year, he does not meet the Council's Licensing Standards for drivers. Standard 11 of Appendix A reads:

'Not to have had a hackney carriage and/or private hire driver's licence revoked within the last 3 years.'

Clause 2.7 of the policy gives delegated authority to refuse licences where applicants do not meet the Council's licensing standards. Officers cannot grant a licence in such cases but if it is considered the circumstances are such that an exception to policy could be made the application may be referred to the Licensing and Environmental Health Committee for determination. This is such a case.

We have heard from the driver this morning and are pleased to note his recovery. Accordingly we grant this application, and he will receive the paperwork in due course. We wish him well.

LIC74

### **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chairman moved Item 4 forward in the proceedings because the driver was in attendance.

The Chairman introduced the Panel and explained procedure to those present.

The Licensing Officer gave a summary of the report.

The applicant had applied for the grant of a private hire/hackney carriage driver's licence on 30 October 2018. As part of the process, the driver submitted an enhanced DBS certificate, which showed 10 convictions dating from 9 July 1965 to 13 December 1977. The applicant did not meet licensing standards due to a conviction during this time which had led to a custodial sentence.



The driver said he had turned his life around following his custodial sentence and had held down a stable job for 35 years and raised a family. He had retired earlier this year but now wanted to go back to work as a taxi driver so he could continue to contribute to the community.

Members were asked to consider whether the driver was a 'fit and proper person' to hold a licence despite not meeting the Council's licensing standards.

At 10.35, the Committee retired to make its decision.

At 10.45, the Committee returned.

The decision was read to the driver.

### **Decision Notice**

The driver's application dated 30<sup>th</sup> October 2018 is for a Private Hire/Hackney Carriage Applicant's licence. If successful, he has an offer of employment from 24 x 7 Ltd.

The driver's application disclosed a 1990 speeding offence in respect of which he is a rehabilitated person. However, an enhanced DBS check obtained by 24 x 7 which he handed to the Council also disclosed ten historic convictions upon dates between 1965 and 1972, some of which were juvenile offences. The certificate was dated 11<sup>th</sup> October 2018 and confirms that the applicant does not meet Point 5 of the Council's Licensing Standards, which state that an applicant must have:-

"No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed."

The Enhanced DBS Check revealed the following matters:-

1. 9/7/65 – Larceny – Conditional Discharge – Islington JJ
2. 26/8/66 – Larceny – Attendance – Islington JJ
3. 27/10/69 – Theft – Fined £5.00 – Billericay JJ
4. 16/6/70 – TWOC, no driving licence, no insurance – 2 years probation/2 year disqualification – Southend Borough JJ
5. 11.10.71 – Theft – Fined £50.00 – Billericay JJ
6. 31/8/72 – TWOC, no licence, no insurance – 12 months disqualification, fined £50 – Thames JJ.
7. 1/9/72 – obtaining a pecuniary advantage by deception – fined £75, plus legal aid contribution and costs – Southend Borough JJ
8. 16/11/72 – theft x 1, burglary and theft x 2 – Borstal training – Southend Crown Court
9. 4/8/76 – ABH, TWOC, no insurance, failure to provide a specimen, minor road traffic offence x 2 – 120 hours community service, 12 months disqualification, £75 fine and costs – Rochford JJ.

10. 13/12/77 – minor road traffic offence x 2, driving whilst disqualified, no insurance – 3 months imprisonment, fined £170 - Grays JJ. Varied on appeal to Chelmsford Crown Court.

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage drivers licences.

In support of his application, the applicant says that all these offences took place many years ago, his life lacked purpose, and as far as the most serious offence, the burglary, is concerned, he was part of a bad group of people at the time. The last of these convictions was in 1977 and since his release from Borstal he took steps to change his life. He remained in work at a tractor plant in Basildon for 35 years, married and raised a family and now has four grandchildren. He has an offer of work from 24 x 7 Ltd on school runs if he is granted a licence today.

Unfortunately in aggregate, these are serious matters and although the overwhelming majority of them took place years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

However, we have listened to what the applicant has to say and note that he has the support of his employer. We are satisfied that he has turned his life around, and accordingly we grant this application, and he will receive the paperwork in due course.

## LIC75 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chairman introduced the Panel and explained procedure to the applicant and his representative.

The Enforcement Officer summarised the report for the Committee's consideration.

The driver had held a private hire/hackney carriage driver's licence with Uttlesford District Council since 13 August 2015. Following a recent DVLA drivercheck, officers revealed that the driver had two offences which had not been disclosed to the Council. These were:

- IN10 offence (using a vehicle without insurance) on 10 October 2017. He was convicted on 12 March 2018 and his licence was endorsed with six penalty points.
- TS20 offence (failing to comply with double white lines) on 22 February 2018. He was convicted on 04 August 2018 and his licence was endorsed with three penalty points.

As well as breaching the conditions of his licence due to non-disclosure of offences, he was also in breach of licensing standards as he had received six

penalty points for the IN10 offence. As the driver no longer met the Council's licensing standards, it was for the Committee to consider whether the driver remained a fit and proper person to retain a licence.

Mr Drinkwater, on behalf of the driver, said both offences had occurred during a difficult period in the driver's life and whilst he was not living in his family home. Prior to these offences, the driver had maintained a clean licence for over twenty years. In mitigation, the IN10 was incurred because the driver had changed his private vehicle's number plate without informing the insurance company (he had, however, informed the DVLA) and, by doing so, had invalidated his existing insurance. Mr Drinkwater said this was an administrative error and not a nefarious attempt to undermine the law.

The driver addressed the Committee. He said he was very sorry for the offences and for not notifying the Council. His life was now in a far better place and he had learnt from his mistakes; he said he was now fully aware of the terms and conditions of his licence.

Two employer references were tabled for the Committee's consideration. Mr Drinkwater affirmed that the driver's employer were very keen to retain his services.

At 11.40, the Committee retired to make its decision.

At 12.30, the Committee returned.

The decision was read to the driver.

### **Decision Notice**

The application before the Panel today is for the suspension or revocation of a driver's joint private hire/hackney carriage licence number PH/HC1296 dated 13<sup>th</sup> August 2015, in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The three year licence is due to expire on 31<sup>st</sup> July 2019. The driver works for 24 x 7 Ltd on the airport side of their operations but he has told us today that he hopes to move onto full time school contract work.

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the driver, and we have also seen, as has he, the background documents annexed thereto

Sadly, the updating of the driver's enhanced Disclosure and Barring Service (DBS) check, group two medical and DVLA mandate were found to be overdue earlier this year. He attended the Council Offices on 16 October 2018 and produced a new group two medical and DVLA mandate, and also completed a new DBS form. According to their records the driver was sent his new certificate on 29 October but he did not produce this to the Licensing Department until 30<sup>th</sup> November.

However, the new DVLA mandate allowed the obtaining of a new DVLA Drivercheck upon him, dated 18 October 2018. This revealed that he had two offences which were:

- IN10 offence (using a vehicle without insurance) on 10 October 2017. He was convicted on 12 March 2018 and his licence was endorsed with six penalty points.
- TS20 offence (failing to comply with double white lines) on 22 February 2018. He was convicted on 04 August 2018 and his licence was endorsed with three penalty points.

Neither of these offences were disclosed to the Council.

Condition 18c of Appendix G of the private hire/hackney carriage driver's conditions of licence states that they must notify UDC in writing of 'any convictions, cautions or fixed penalty notices within seven days of the date of conviction, caution or the issue of a fixed penalty notice.'

The driver has breached these conditions of licence on two occasions in the last 12 months and did not even disclose the fact when he attended the Council Offices on 16 October. We take these failures into account.

More importantly, as a result of receiving six penalty points for a single offence, the driver no longer meets the Council's Licensing Standards for drivers.

Paragraph 2 of Appendix A thereof states:

"No convictions or fixed penalty notices endorsed on a driver's licence within the last three years where six or more points have been endorsed in respect of a single offence."

On 28 November 2018, the driver emailed the Enforcement Officer and explained the broad outlines surrounding the convictions and gave further background to his breaches of conditions. A copy is included among our papers and we have read it carefully. On the following day, the Enforcement Officer carried out a telephone interview with the driver to obtain further information, and the following disclosures were made:- .

The IN10 offence happened when the driver was using his private vehicle. This vehicle was on a personalised plate and he had agreed to sell it so had reinstated the original licence plate. However, he did not notify the insurance company and although there was an insurance policy it did not have the correct registration number and was therefore invalid. As a result he received six penalty points and a fine of around £600.

The T20 offence took place when the driver was merging onto the M11 from M25 going southbound, again in his personal vehicle. He crossed the lines before he should have and this matter was reported by the Police. He explained that he enquired with the Police at the time as to whether he would get penalty points, and they told him he would probably have to do a course. However, while this offence was pending, he was living away from home and so did not see the letters. He subsequently received 3 penalty points and a fine of over £100.

Finally, the driver was asked if he was aware of his driver's conditions of licence and he said that he had read them when his licence was granted but he had not looked at them since. He explained that he did not think he had to report penalty points to the Council unless he had over six points.

We have read the papers before us and we have heard from the driver and from Mr Drinkwater, representing him this morning. We have also read two references submitted to us today.

We understand that the administrative procedures needed to change a private number plate on a car are complex and time consuming. However, the documentation needed to the procedure explains what is required, and insurance policies similarly explain the notification requirements if any changes are made to vehicle details, and the consequences of failure. Driving without a valid policy insurance in place is a serious offence.

We have debated this case anxiously among ourselves, and we have taken into account the Council's policy, case law, and the mitigation put before us on behalf of the driver. We have also taken into account that the driver has been fined over £700 by the Courts and that he has nine points on his licence.

We have also taken into consideration the fact that the driver did not notify the Council at the time the offences took place: he also failed to notify when he met with officers on 16<sup>th</sup> October. We had to find out via the DVLA disclosure. This, when coupled with the failure to refresh his memory regularly regarding his regulatory obligations, is also of considerable concern.

However, in this case we do not consider revocation of the licences to be merited: nevertheless, we cannot let these matters go unsanctioned, and we are therefore minded to suspend the driver's licences. This suspension will be for a period of 28 days.

There is a right of appeal against this decision which must be exercised within a period of 21 days. This period runs from the date of formal notification of the Committee's decision, that is, today. The suspension will therefore begin on 9<sup>th</sup> January 2019, and the driver will receive a letter from the Legal Department explaining this.

*Councillor Hick's left the meeting at 12.35.*

## LIC76 **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE**

The Chairman proposed to move the meeting back into the public domain. The Committee agreed.

The Operator had not attended the meeting, nor had he responded to any correspondence from the Enforcement Officer.

The Committee considered the Enforcement Officer's report.

Stansted Airport Cars held a private hire operator's licence which was due to expire on 31 August 2021 but records indicated that the operator did not have any licensed vehicles in operation. In addition, a search of Companies House showed that the company was dissolved on 20 February 2018.

On the 7 November 2018, the Enforcement Officer carried out visits to both the residential and business addresses of the Operator. At both addresses it was clear that the Operator had moved on without notifying the Council of a change in address. This was in breach of the Council's licensing conditions.

Furthermore, the Operator's DBS check had expired on 31 October 2018 and he had failed to supply a new one.

Members were asked to consider whether the Operator remained a fit and proper person having failed to comply with the conditions of his licence.

At 12.40, the Committee retired to make its decision.

At 12.50, the Committee returned.

The Chairman read the decision notice.

### **Decision Notice**

The application before the Panel today is for the suspension or revocation of Stansted Airport Cars Ltd's private hire operator's licence number PH0048 dated 12<sup>th</sup> September 2016, in accordance with S62 Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The three year licence is due to expire on 31<sup>st</sup> August 2021. The registered office of the company was 12 Stansted House, Stansted Business Park, Stansted CM24 1AE and the holder of the operator's licence was one Donald Wright who ceased to hold a driver's licence on 31<sup>st</sup> October. Records show that the company does not hold any vehicle licences and was last known to have two drivers: however, the nature of the industry is such that working arrangements are casual and many licensed drivers do not notify the Council when they change workplace.

We have had the opportunity of reading the officer's report in this case, together with Uttlesford District Council's licensing standards for operators and a bundle of documents from Companies House showing Stansted Airport Cars Ltd was dissolved on 20<sup>th</sup> February 2018. The dissolution of a company is the equivalent of the death of a natural person and we note that Mr Wright was the sole director and shareholder of this company. We are satisfied on the balance of probabilities that the limited company was an alter ego for Mr Wright and that the reality is that they were one and the same.

The Enforcement Officer made a number of enquiries. Mr Wright was liable for business rates at 12a Stansted House, Stansted Business Park, Stansted, Essex, CM24 1AE between 2 September 2016 to 30 May 2017. No change of address has ever been notified. Accordingly on 07 November 2018, the Enforcement Officer carried out a visit to the operating address. 1AE. There was no office number 12 as they were split into smaller offices. A neighbour stated

that Stansted Airport Cars used to have the offices for 12a, 12b and 12c but that the offices had been re-let and there was no signage for Stansted Airport Cars in place. The Officer then visited the residential address given for Mr Wright and was told that Donald Wright was her son-in-law but they were estranged, they had no contact number for him and that he moved out about three years ago.

Condition 6 of Appendix H of the Council's Licensing Standards for Operators states that 'the operator is required to notify the Assistant Chief Executive – Legal [now the Licensing Dept] in writing within 7 days of:

- a. Any change in his or her residential address.
- b. Any change in his or her business address.'

Mr Wright has clearly breached these requirements and it therefore follows that that Condition 3 of the same Appendix cannot be complied with as the Council's officers cannot exercise their powers under S56(3) of the 1976 Act as they do not know where he is living and/or working from.

Furthermore, all licensed private hire operators are required to undergo basic Disclosure and Barring Service (DBS) checks upon application and every three years to assist the Council in ensuring that they are 'fit and proper.' Mr Wright's last DBS check expired on 31 October 2018 and he has failed to supply a new one despite a reminder letter being sent to him on 06 September 2018. All correspondence directed to him has been returned to the Council by the Royal Mail.

The primary function of this Committee is the protection of the public and we consider that we have no alternative but to revoke Mr Wright's operator licence under S62 of the 1976 Act as he is no longer a fit and proper person to hold it. There is a right of appeal against this decision which must be exercised within a period of 21 days. Mr Wright will receive a letter from the Legal Department explaining this.

The meeting ended at 12.55.

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# Agenda Item 3

<b>Committee:</b>	<b>Licensing and Environmental Health</b>	<b>Date:</b>
<b>Title:</b>	<b>Fees for Drivers, Hackney Carriage and Private Hire Vehicles and Private Hire Operators</b>	29 January 2019
<b>Report Author:</b>	<b>Amanda Turner, Licensing Team Leader</b>	<b>Item for decision:</b> Yes

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## Summary

- 1 On 6 November 2018 the Licensing and Environmental Health Committee approved the proposed fee structure to come into effect on 1 April 2019.
- 2 This report considers the responses to consultation on the proposed increases to the fees relating to hackney carriage and private hire vehicles and private hire operators licences.
- 3 As objections have been received on this matter the Committee must consider whether the variation to fees will come into force with or without modification.

## Recommendations

- 4 That the Licensing and Environmental Committee approve the proposed fee structure attached at Appendix A, to take effect on 1 April 2019, notwithstanding the objections received during the consultation period.

## Financial Implications

- 5 There are cost implications to the Council in undertaking this statutory service, but the legislation requires the Council to recover its costs in administering the scheme and ensuring compliance.

## Background Papers

- 6 None

## Impact

Communication/Consultation	On 15 November 2018 all Operators and Hackney Carriage proprietors and the Trade Association were emailed and advised of the proposed fee structure. This was also advertised in 2 local newspapers circulating the District of Uttlesford and also on the Uttlesford website.
Community Safety	A principle purpose of the licensing of hackney carriages and private hire drivers, vehicles and operators is safeguarding the

	public
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	<p>Sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 (“the Act”) allow the Council to charge fees for the grant of licences in respect of hackney carriage and private hire drivers, vehicles and operators. The legislation specifies the elements that can be included in the cost of the licence fee.</p> <p>In accordance with section 70 of the Local Government (Miscellaneous Provisions) Act 1976, there is a legal requirement for the Council to undertake a public consultation on any proposal to increase hackney carriage and private hire vehicle and Operators fees and charges.</p>
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	Environmental Health – Licencing Team

### Situation

7. The Council is required to review the fees relating to hackney carriage and private hire vehicles and private hire operators licences to ensure full cost recovery of the licensing service in relation to the relevant cost centres.
8. At present these costs are not being met in full from licence fees. This is not a sustainable position as it means that funding is required from other council budgets to maintain essential licencing activities which are in the interests of public safety.
9. On 6 November 2018, following a review of the Council’s licensing fees and charges, members of the Licensing and Environmental Health Committee approved the fee structure presented to them in Appendix A.
10. There is a requirement for the council to undertake a formal consultation (for vehicle and operator fees) and consider any objections received prior to implementing any increase.

### Consultation

11. Emails detailing the proposals were sent to the Chairman of the ULODA Taxi Trade Association, all licensed private hire operators and hackney carriage proprietors. A statutory notice was placed in the Saffron Walden Reporter and Dunmow Broadcaster on 15 November 2018 displaying the proposed fees and advising that any objections should be received by midnight on 13 December 2018. A notice was also placed on the Council's website.
12. A meeting was held between officers and the trade organisation on 23 November 2018 to go through the figures in more detail and answer any questions raised by Members of the Trade.
13. Three responses were received of which one was from ULODA, and two from private hire companies. The responses received can be seen in Appendix B
14. Replies from Officers relating to these individual responses are also shown in Appendix B.

### **Considerations**

15. Licence fees cover the costs of licencing administration process and compliance and enforcement activities associated with regulation of the licenced taxi and private hire trades where these cost can be legitimately recovered through the licence fees.
16. The previous 2 fee increases came into effect on 1 October 2015 and 1 May 2018. No increase took place during the years of 2016 and 2017.
17. A major piece of work has been undertaken by officers to establish the activities and costs relating to each licence type. This work was necessary as there have been significant changes with regard to the administration of licencing in recent years and this is reflected in the cost information provided by officers.
18. The rise in costs reflects the need for additional pre-application processes and checks to safeguard the public. Effective regulation of the Taxi and PHV trade ensures, in the overriding public interest, that standards are high and the public are protected.
19. The cost of doing so, provided they are proportionate to the activities in respect of which they are charged, can be recovered through licence fees.
20. All costs in assessing an application are compliant with regulations. As part of the process of calculating fees officers have taken legal advice and ensured that the costs of each licencing, regulatory and compliance activity is properly attributed to the licence type generating that cost.
21. Having considered the objections received during the consultation Members are requested to approve the proposed fee structure attached as Appendix A to take effect on 1 April 2019.

### **Risk Analysis**

Risk	Likelihood	Impact	Mitigating actions
Fees are set at a level in excess of that required to cover the cost of the Licensing Authority	1 – All costs in assessing an application have been accurately assessed and are compliant with regulations	2 – a surplus would be generated which could be countered by a reduction in future years	Costs of providing the service are accurately monitored to minimise the risk of challenge

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

**Appendix A :Proposed new licence fees from 1<sup>st</sup> April 2019**

	<b>CURRENT</b>	<b>PROPOSED</b>	<b>INCREASE</b>	<b>INCREASE</b>
			Note 1	<b>PER WEEK</b>
	£	£	£	£
DRIVER NEW LICENCE – 3 years	173	216	43	0.28
DRIVER RENEWAL LICENCE – 3 years	160	215	55	0.35
DRIVER NEW LICENCE – 2 years	127	199	72	0.69
DRIVER RENEWAL LICENCE – 2 years	114	198	84	0.81
DRIVER NEW LICENCE – 1 years	91	182	91	1.75
DRIVER RENEWAL LICENCE – 1 years	77	181	104	2.00
VEHICLE NEW LICENCE – 1 year	58	108	50	0.96
VEHICLE RENEWAL LICENCE – 1 year	47	96	49	0.94
VEHICLE TRANSFER LICENCE	40	100	60	1.15
OPERATOR NEW LICENCE – 5 years	427	478	51	0.20
OPERATOR RENEWAL LICENCE - 5 years	420	476	56	0.22

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## Appendix B: Consultation responses and answers

3 Consultation responses were received

### 1st response

From: robert rodriguez  
Sent: 15 November 2018 14:22  
To: Taxi Fees  
Subject: Imminent Taxi Fee increase

Dear sir,

I find the increases to licensing costs to be abhorrent and totally unreasonable . There is absolutely no reason why they almost double- what we get from the council in terms of service turnaround , technology assisting in the process and prehistoric huge yellow licence signs for the rear of vehicles ( PHV) when other authorities have reduced size and more attractive and easier to attach, more operators in the district meaning less work available and you're asking to double the fees !! Honestly this a con trick , let UDC find additional funds from elsewhere rather than instigating an almost 100% increase for a very basic non improving service.

Rob Rodriguez  
Abel Private Hire

### **Uttlesford District Council response**

The taxi license fees are set in order to recover certain costs (recoverable costs) associated with the licence as dictated by the relevant legislation. The increase in fees being proposed is due to the current costs incurred by the council in issuing these licences being substantially higher than are currently being recovered by the taxi licence fees. A detailed review of time spent on taxi licensing activities resulted in an overall increase in the timings used for calculating recoverable costs compared to the last time such an exercise was undertaken. The reasons for the increase in time spent include

1. In previous fee setting exercises, the time spent was under recorded on many activities
2. Inclusion of activities that were overlooked in previous fee settings
3. There are some new activities

### 2nd response

**From:** Matt Flowers  
**Sent:** 20 November 2018 14:38  
**To:** Taxi Fees  
**Cc:** Phil Hudson  
**Subject:** Fees For Hackney Carriage and Private Hire Licences

Dear Mr Anthony Cobden

I have just been made aware of the proposal to increase the Private Hire Vehicle Licence Fee from April 1<sup>st</sup> 2019.

I would like to object to the proposed variations on the basis that a renewal licence fee is increasing over 100%. That is a huge increase which will impact our business significantly given the amount of vehicles we licence. We are in fixed term contracts with various business suppliers and are unable to increase our charge to them. In an already competitive market this will undoubtedly place pressure on our margins as a business.

I was of the understanding that the license fee does not attract a profit for the council and I'm therefore wondering how your costs to administer them have increased so sharply.

I look forward to your response.

Regards

Matt Flowers

Director

### **Uttlesford District Council response**

The taxi license fees are set in order to recover certain costs (recoverable costs) associated with the licence as dictated by the relevant legislation. The increase in fees being proposed is due to the current costs incurred by the council in issuing these licences being substantially higher than are currently being recovered by the taxi licence fees. A detailed review of time spent on taxi licensing activities resulted in an overall increase in the timings used for calculating recoverable costs compared to the last time such an exercise was undertaken. The reasons for the increase in time spent include

1. In previous fee setting exercises, the time spent was under recorded on many activities
2. Inclusion of activities that were overlooked in previous fee settings
3. There are some new activities

### **3rd response**

Dear Mr Cobden

You will find attached an email dated 12 December from James Button in response to your consultation, in the interests of openness and transparency. We decided it would be both reasonable and valuable to commission inputs from the UK's leading licensing expert, who is also President of the IoL.

Having reviewed James's email, Andy Mahoney, Robert Sinnott, Richard Ellis and I are submitting his conclusions 3 and 4 as objections to the proposals.

Please explain and justify the costs of enforcement action relating to vehicles, and pre-application costs for operator licences, in the light of James Button's comments with his third conclusion.

His fourth conclusion. In the Licensing - Taxi Actuals and Forecasts, we are convinced that it is not correct to charge Safeguarding work at the levels indicated, which are set in the Budget and Forecasts going forward (we were told by Brian Stuart) at 40% of the salary cost of the newly recruited responsible officer. This is *not* a cost which should be recovered against the issue and administration of licences.



We are also objecting to the inclusion in the calculations of charges for Accounting, Internal Audit, HR and ICT. These charges are not attributable to taxi licensing - what do they have to do directly with the issue and administration of licences? These are to be taken as *four* separate objections.

Finally, we object to the suspected inclusion in the Licensing staffing expenditure line of the Licensing Consultant's contracted salary. We do not consider it reasonable for the Council to recover his cost against taxi licensing - his work is not relevant to the issue and administration of licences.

We look forward to further dialogue with officers and members in due course.

Many thanks.

Barry Drinkwater

Chairman – ULODA

#### **Uttlesford District Council response**

With regard to the enquiry on the costs of enforcement action relating to vehicles, these costs include the following:

- Checking post accident repairs
- Investigating complaints/concerns about vehicles (includes time on case notes, emails and phone calls)
- Vehicle inspections
- Stop checks on vehicles

UDC believes that the relevant legislation allows for the recovery of the costs associated with the above activities in the vehicle licence fees.

With regard to the query on the inclusion of costs of enforcement officers included in the operator fees, these costs relate to pre-application checks on the operator to ensure 'fitness to operate' and includes site visits. This applies to both new and renewal operator licence applications. Although the work is carried out by the enforcement team it obviously does not relate to 'enforcement' action *per se* and perhaps this has led to the query being raised as to whether the cost can be legally included.

With respect to the enquiry about whether the licensing consultant's costs are being included in the licensing fees, UDC have included the cost of a once every 10 year peer review being carried out (based on an annual cost equivalent to the costs incurred in peer review undertaken in 2017/18 divided by 10). UDC believe that these are recoverable overhead/support costs for the taxi licensing service and should be viewed in a similar way to the recoverability of management costs through the licence fees. If an external consultant did not undertake the review of the service then the task would fall to senior management to undertake and the cost would be recovered as an extra management overhead cost on the licensing function. Regular peer reviews ensure the taxi licensing function is adhering to best practices and is directly complimentary to the management support to the taxi licensing service. The inclusion of the peer review cost amounts to 32pence on each 3 year driver licence, 11 pence on a vehicle licence and 82 pence on each operator licence.

With regard to the query on the inclusion of Accounting, Internal audit, HR and ICT costs in the licensing fees our response is as follows.

The Council reports the costs of service according to the Code of Practice advised by the Chartered Institute of Public Finance and Accountancy (CIPFA). This involves apportioning the cost of support services (overheads) to 'frontline' services on a fair and reasonable basis. This approach is used for reporting costs in the Annual accounts, in the Council tax leaflet and in statistical returns to Government. Using this approach gives a truer indication of the service's cost since, for example, in order to provide the licensing service it needs to have an ICT service to provide the computers, networks and software, an HR service for providing the payroll service and recruitment functions, an internal audit service to ensure that the Taxi Licensing service is operating accurately and efficiently and an Accounting function to ensure that bills are paid and financial records are maintained.

For clarity the inclusion of 40% of the costs of Safeguarding Officer in the taxi licensing fees are overhead/support costs for the effective operation of the taxi licensing service and reflect the need for additional pre-application processes and checks to safeguard the public. Effective regulation of the Taxi and PHV trade ensures, in the overriding public interest, that standards are high and the public are protected. The cost for this work has been estimated and apportioned on a fair and reasonable basis however clear records will be maintained by the safeguarding officer and in light of these records the estimate of 40% of time spent will be reviewed at the next annual fee review. There is no overlap between the inclusion of costs of the Safeguarding Officer in the licence fee and the proposed driver training day since the time (that may be) spent by the Safeguarding Officer in conducting that element of the training day is not included in the 40% of time being charged for.