

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, County Hall, Ruthin on Wednesday, 28 June 2017 at 9.30 am.

PRESENT

Councillors Joan Butterfield, Hugh Irving, Alan James, Brian Jones, Barry Mellor, Melvyn Mile, Arwel Roberts, Peter Scott and Huw Williams

Observer – Councillor Meirick Davies

ALSO PRESENT

Solicitor (AL), Head of Planning and Public Protection (GB), Public Protection Business Manager (IM), Licensing Officer (NJ), Licensing Enforcement Officer (TB) and Committee Administrator (KEJ)

1 APOLOGIES

Councillor Rhys Thomas

2 APPOINTMENT OF CHAIR

Nominations were sought for the appointment of Chair of the Licensing Committee for 2017/18. Councillor Brian Jones proposed, seconded by Councillor Arwel Roberts that Councillor Hugh Irving be appointed Chair. Councillor Joan Butterfield proposed, seconded by Councillor Barry Mellor that Councillor Alan James be appointed Chair. Upon being put to the vote it was –

RESOLVED that Councillor Hugh Irving be appointed Chair of the Licensing Committee for the ensuing year.

3 APPOINTMENT OF VICE CHAIR

The Chair invited nominations for Vice Chair of the Licensing Committee for 2017/18. Councillor Joan Butterfield proposed, seconded by Councillor Barry Mellor that Councillor Alan James be appointed Vice Chair. There being no further nominations and upon being put to the vote it was –

RESOLVED that Councillor Alan James be appointed Vice Chair of the Licensing Committee for the ensuing year.

4 DECLARATION OF INTERESTS

Councillors Joan Butterfield, Alan James, Brian Jones, Barry Mellor and Tony Thomas declared a personal interested in Agenda Item 12 – Renewal Application for a Licence to Drive Hackney Carriage and Private Hire Vehicles because the Applicant was known to them.

5 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

6 MINUTES OF THE LAST MEETING

The minutes of the Licensing Committee held on 8 March 2017 and Special Licensing Committee held on 5 April 2017 were submitted.

RESOLVED that the minutes of the meetings held on 8 March 2017 and 5 April 2017 be received and confirmed as a correct record.

At this point it was agreed to vary the order of the agenda in order to accommodate individuals attending for particular items.

EXCLUSION OF PRESS AND PUBLIC

RESOLVED that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following items of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 14 of Part 4 of Schedule 12A of the Act.

7 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 517116

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application having been received from Applicant No. 517116 for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the application in light of the convictions revealed following an enhanced disclosure to the Disclosure and Barring Service (DBS) relating to offences committed in 1998 under the Road Traffic Act 1988 which had not been disclosed by the Applicant and the accumulation of 14 penalty points on his DVLA Driving Licence relating to traffic offences committed during 2014 and 2015, one of which had not been disclosed by the Applicant;
- (iii) relevant documentation relating to the case including details of the Applicant's formal interview having been attached to the report;
- (iv) referred to the Council's policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to the meeting in support of his application and to answer members' questions thereon.

The Applicant confirmed he had received the report and committee procedures.

The Licensing Enforcement Officer (TB) introduced the case.

The Applicant provided some background information relating to his personal circumstances and employment history and his ambition to become a taxi driver. He explained the circumstances surrounding the application process including discussions with licensing staff regarding his offences and detailed his reasoning behind the omission of particular details of offences on the application form and timing of its submission based on their advice. Reference was also made to the taped interview and he elaborated further on the advice provided by licensing staff and called a witness who was in attendance to collaborate his statement. The witness also provided a character reference for the Applicant. Finally the Applicant assured members that he was fit to hold a licence which had been demonstrated in his previous and current part time occupation and he provided an explanation of the offences incurred and his circumstances during that time.

During questioning the Applicant reported upon research he had undertaken regarding the pertinence of his convictions and his belief that, apart from 3 penalty points, the remaining penalty points as detailed within the report had been spent. However he conceded that he may have placed too much reliance on the advice provided by licensing staff during the application process.

Officers clarified a number of issues and responded to questions as follows –

- information regarding penalty points was provided on the DVLA's website – points remained on the licence for 3 years and were kept on record for 4 years in the majority of cases. The points incurred by the Applicant were relevant in the application process and remained on record until the dates as specified in paragraph 4.9 of the report
- the application had been made and received on 31 March and the DBS certificate had been submitted in May 2016
- the Council's conviction policy specified that a driver may be referred to the Licensing Committee where there were more than two minor traffic offences
- every application pack included guidance for applicants and the Council's convictions policy and clearly stated how convictions would be dealt with. The hackney carriage/private hire licensing conditions (blue book) had not been issued at that time and related to conditions following the grant of a licence.

In making a final statement the Applicant reiterated that he had discussed his application with licensing staff and had disclosed his convictions and sought advice thereon prior to completion of the application form which had been submitted in accordance with that advice. He assured members that he was fit to hold a licence and that he did not present a risk to the public based on his conviction history and taking into account his good character.

The committee adjourned to consider the application and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle driver's licence from Applicant No. 517116 be refused.

The reasons for the Licensing Committee's decision were as follows –

Members had carefully considered the facts of the case and explanation provided by the Applicant with regard to the offences and reasoning behind his non-disclosure of relevant convictions. The Applicant had 14 penalty points which remained on record, some of which he had failed to disclose on his application form. Therefore members determined that the application should be refused on that basis in accordance with the Council's conviction policy.

No mitigation put forward by the Applicant had persuaded members that they should deviate from the conviction policy and grant the application and it was considered that the onus was on the Applicant to ensure the correct information was provided on the application form. However the Applicant was reminded that he was able to make a fresh application at such time in the future when the penalty points had been spent.

The committee's decision and reasons therefore were conveyed to the Applicant together with the right of appeal against the decision to the Magistrates Court within 21 days.

8 RENEWAL APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 518819

[Councillors Joan Butterfield, Alan James, Brian Jones, Barry Mellor and Tony Thomas declared a personal interest and left the meeting for the duration of this item.]

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) a renewal application having been received from Applicant No. 518819 for a licence to drive hackney carriage and private hire vehicles;
- (ii) officers having not been in a position to grant the renewal application following accrual of 9 penalty points on the Applicant's DVLA Driving Licence for traffic offences covering the period February 2014 to May 2018 which had been confirmed following a routine check as part of the renewal application;
- (iii) the Council's policy with regard to the relevance of convictions, and
- (iv) the Applicant having been invited to attend the meeting in support of his renewal application and to answer members' questions thereon.

The Applicant was accompanied by his Legal Representative and confirmed receipt of the report and committee procedures.

The Licensing Officer (NJ) introduced the report and detailed the facts of the case.

The Applicant explained the circumstances surrounding the three traffic offences, particularly with regard to the last offence and mitigation which had been accepted

by Magistrates and reflected in the reduction of penalty points awarded. The Legal Representative added that the minor speeding offences would be expended in 2018 and highlighted the zero tolerance approach taken by North Wales Police in that regard. He also reiterated the mitigation put forward with regard to the last offence when the passenger had been taken ill. In closing the Legal Representative advised that removal of the licence would result in financial difficulty for the Applicant and advised that there were few night time drivers and the Applicant helped to meet that demand.

The Applicant responded to members' questions regarding the offences and confirmed that he worked independently. It was also established that, notwithstanding the recent changes in legislation regarding speeding offences, the zero tolerance approach had been implemented for some time prior to that.

In making a final statement the Applicant's Legal Representative advised that he was not attempting to circumvent due process and had clearly explained the circumstances regarding the traffic offences. If members determined to remove the licence it would also remove the Applicant's livelihood and cause financial difficulty.

The committee adjourned to consider the application and it was –

RESOLVED that the renewal application for a hackney carriage and private hire vehicle driver's licence from Applicant No. 518819 be granted with a formal warning issued as to his motoring convictions and future conduct.

The reasons for the Licensing Committee's decision were as follows –

The committee's overriding consideration was public safety and reference to the submissions that removal of the licence would cause financial strain and put pressure on those seeking taxis services at night were not relevant considerations and disregarded. Members had carefully considered the facts of the case and mitigation put forward by the Applicant in terms of the motoring convictions. Concern was expressed regarding the accumulation of 9 penalty points which would generally warrant refusal of the application. However, having considered the mitigation and given that the convictions were classed as minor traffic offences, and accepting that the final conviction had occurred under difficult circumstances, it was agreed not to refuse the renewal application on this occasion. Instead consideration was given to either suspending the licence for an appropriate period or issuing a formal warning. On balance it was decided that a strict warning regarding the traffic convictions incurred and future conduct should be issued in this case. The Applicant was also reminded of the importance of disclosing any offences following conviction in accordance with licensing conditions.

The committee's decision and reasons therefore were conveyed to the Applicant and his Legal Representative together with the right of appeal against the decision to the Magistrates Court within 21 days.

9 DISPENSATION FROM REQUIREMENT TO DISPLAY PRIVATE HIRE VEHICLE LICENCE PLATES (1)

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) an application for dispensation from the requirement to display licence plates on two Private Hire Vehicles;
- (ii) the draft policy regarding requests for exemption to display private hire plates and door stickers (Appendix A to the report);
- (iii) the Council's powers to grant a proprietor dispensation from displaying the licence plate taking into account the executive nature of the work along with the quality of the vehicle involved and where the vehicle would be operated;
- (iv) the applicant having provided full details of the two vehicles subject of the application and nature of the business (Appendix B to the report), and
- (v) other determining factors requiring consideration and suggested conditions (Appendix C to the report) should members be minded to grant the dispensation request.

The Licensing Officer provided a summary of the report. She drew members' attention to the suggested conditions (Appendix C to the report) and advised that condition 9 should be removed.

The Applicant elaborated upon the operation and nature of his business which mainly undertook corporate work. The reasoning behind his request for dispensation was explained in order to upgrade the vehicles due to the success and expansion of the business. Previous requests had been granted by the committee and had included endorsements from client companies.

The committee adjourned to consider the application and it was –

RESOLVED that the request for dispensation from the requirement to display the private hire vehicle licence plate and door stickers for the two vehicles as detailed within the report be approved subject to the conditions (removal of condition 9) as detailed in Appendix C to the report.

The reasons for the Licensing Committee's decision were as follows –

Having considered the report and submission of the Applicant members were satisfied that the nature of the work and quality of the vehicles involved met the criteria for exemption in this case. The conditions had been imposed in order to aid regulation and enforcement. Members had been pleased to note the success of the business and upgrading of the vehicles.

The committee's decision and reasons therefore were conveyed to the Applicant.

10 DISPENSATION FROM REQUIREMENT TO DISPLAY PRIVATE HIRE VEHICLE LICENCE PLATES (2)

The committee was advised that this application had since been withdrawn.

At this juncture (11.15 a.m.) the meeting adjourned for a refreshment break.

OPEN SESSION

Upon completion of the above business the meeting resumed in open session.

11 REVIEW - GAMBLING ACT 2005 STATEMENT OF PRINCIPLES

The Public Protection Business Manager submitted a report (previously circulated) presenting the Council's draft Statement of Principles (Gambling Act 2005) for consideration and approval for formal consultation.

Members were reminded of the statutory requirement to review the Statement of Principles every three years. The draft document had been developed by the six licensing authorities in North Wales to ensure consistency in matters relating to Gambling issues and functions and due regard had been given to the licensing objectives of the Gambling Act 2005 and the Gambling Commission's 'Guidance of Licensing Authorities' as part of that review. Details of the consultation process had also been provided which included both responsible authorities and existing licence and permit holders. Members confirmed they were happy to approve the draft for formal consultation and it was subsequently –

RESOLVED that the draft Council's Statement of Principles (Gambling Act 2005) as attached to the report be approved for statutory consultation.

12 REVIEW OF SEX ESTABLISHMENT POLICY

The Public Protection Business Manager submitted a report (previously circulated) updating members on the review of the Sex Establishment Policy.

In March 2015 the Licensing Committee had resolved that steps be taken to adopt the provisions of Section 27 of the Policing and Crime Act 2009 in order to regulate lap dancing clubs as sexual entertainment venues under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and to amend the current Sex Establishment Policy in that regard and ensure it was fit for purpose. Whilst there were currently no premises of that type in Denbighshire, the adoption of those powers would serve as a preventative measure for any future premises. Due to the need to prioritise the formulation and revision of policies, officers considered that they would be in a position to present members with a draft revised policy in 2018. In the meantime any applications for sexual entertainment venues would be referred the Licensing Committee under existing procedures.

Councillor Joan Butterfield reported that the sex establishment formerly situated in Water Street, Rhyl had been relocated outside of the county but it had operated discretely with no problems and without causing offence.

RESOLVED that the report be noted and the timescales for the formulation of a revised draft Sex Establishment Policy as detailed therein be approved.

13 REVIEW OF STREET TRADING POLICY

The Public Protection Business Manager (PPBM) submitted a report (previously circulated) updating members on progress with the review of the current Street Trading Policy in Denbighshire.

In 2015 the Licensing Committee authorised officers to review the existing street trading policy in order to address difficulties with the regime and suggest improvements to better regulate and support street trading within the county. A draft policy was considered by the Licensing Committee in December 2016 and it was agreed that an initial consultation be undertaken with City, Town and Community Councils along with internal council departments, particularly in respect of the proposed system of temporary block consents and special events outlined in the draft policy, prior to public consultation. Comments received as a result of that initial consultation had been included in the latest draft which was currently undergoing public consultation until 30 June 2017. It was suggested that a final draft, incorporating responses received as a result of the public consultation, be presented to the next meeting of the committee.

Councillor Joan Butterfield highlighted the importance of a fit for purpose policy, particularly for the larger towns, and was pleased that the policy would be brought back to committee for ratification. Whilst she did not recall the draft policy being submitted to Rhyl Town Council she would review their response and revisit the draft policy in response to the consultation. Councillor Butterfield was particularly keen to review the proposed system of temporary block consents for street trading and suggested that a map be produced in that regard for clarity. The PPBM encouraged engagements with City, Town and Community Councils and welcomed the opportunity to discuss the matter further. Councillor Arwel Roberts did not recall the draft policy being submitted to Rhuddlan Town Council but advised that he would make enquiries. In response to concerns raised by Councillor Roberts regarding the cost of road closures for community events it was established that it was not a matter for consideration under the street trading policy but could be an issue for scrutiny to consider. Councillor Roberts agreed to submit a member proposal form to the Scrutiny Chairs and Vice Chair's Group directly in that regard. Councillor Huw Williams felt there would also be merit in consulting with Member Area Groups (MAGs) on the draft street trading policy. The PPBM advised that following the consultation period a final policy would be drafted and he agreed to engage with MAGs prior to submission of the final version to committee.

RESOLVED that the report be noted and officers be authorised to continue work on the draft Street Trading Policy with a final version being submitted to the committee's next meeting for consideration.

14 LICENSING COMMITTEE FORWARD WORK PROGRAMME

A report by the Head of Planning and Public Protection was submitted (previously circulated) on the Licensing Committee's future work programme for 2016.

Members' attention was drawn to paragraph 3.4 of the report regarding a national conviction policy being developed for local authorities by the Institute of Licensing and Local Government Association. Consequently officers suggested that any further work on reviewing the existing policy be deferred until the national policy had been finalised. In response to questions officers explained that –

- the last meeting of Denbighshire Taxi Forum had been some two years ago and there were no current plans to resurrect it given that it had not been representative of Denbighshire as a whole but had focused mainly on trade in Rhyl and Prestatyn
- there had been no increase in taxi fares and charges since 2008/09 as the taxi trade had not generally been supportive of an increase; however it was likely that a request from the trade would be forthcoming which would result in a report to committee which would be included on the forward work programme. It was noted that the taxi fares and charges detailed the maximum amounts payable and taxi firms could charge less if they wished.

RESOLVED that the Licensing Committee's forward work programme as detailed in Appendix 1 to the report be approved together with proposed amendments as detailed in paragraph 3.4 of the report.

The meeting concluded at 12.05 p.m.