

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, Russell House, Rhyl on Wednesday, 23 September 2015 at 9.30 am.

PRESENT

Councillors Joan Butterfield, Bill Cowie, Hugh Irving, Barry Mellor (Vice-Chair), Win Mullen-James, Pete Prendergast, Arwel Roberts and Cefyn Williams (Chair)

ALSO PRESENT

Head of Legal, HR and Democratic Services (GW), Public Protection Business Manager (IM), Licensing Officers (NJ & JT), Licensing Enforcement Officer (HB), Senior Community Safety Enforcement Officer (TWE) and Committee Administrator (KEJ)

POINT OF NOTICE

The Chair agreed to vary the order of the agenda to accommodate officers and individuals attending for particular items.

1 APOLOGIES

Councillors Richard Davies and Huw Williams

Councillor Pete Prendergast would be arriving late for the meeting.

2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

4 MINUTES OF THE LAST MEETING

The minutes of the Licensing Committee held on 10 June 2015 were submitted.

RESOLVED that the minutes of the meeting held on 10 June 2015 be received and confirmed as a correct record.

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 Paragraph 12 of Part 4 of Schedule 12A of the Act.

5 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 14/0859/TXJDR

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

- (i) the suitability of Driver No. 14/0859/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 37 penalty points under the Council's penalty point scheme for parking a licensed vehicle in contravention of parking regulations, driving an unlicensed vehicle and driving the vehicle with two defective tyres;
- (ii) details of the incidents spanning May – July 2015 having been included within the report (a summary of facts together with associated witness statements and documentation had been attached to the report), and
- (iii) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver confirmed he had received the report and committee procedures. The Enforcement Officer introduced the report and detailed the facts of the case. In cases where 20 or more penalty points had been accrued in a 24 month period the matter was referred to committee for review.

The Driver presented his case and explained he had made no deliberate attempt to deceive but had overlooked the fact that his vehicle licence had lapsed and the tyre defects had not been clearly visible because they had been worn on the inside. With regard to the parking ticket he explained that he had exceeded the permitted time. He referred to his previously unblemished record and apologised for his misdemeanors. When questioned, the Driver advised that he was owner/driver of the licensed vehicle but operated via a taxi company. In making his final statement the Driver advised that taxi driving was his livelihood and he could not afford a suspension or revocation of this licence.

The committee adjourned to consider the case and it was –

RESOLVED that the hackney carriage and private hire vehicle driver's licence issued to Driver No. 14/0859/TXJDR be revoked on public safety grounds with immediate effect.

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

Members carefully considered the evidence presented and representations made by the Driver in support of his case. It was found that the Driver had failed to submit the vehicle for a compliance check, had driven the vehicle some three months after the licence had expired and therefore uninsured, and that the vehicle was in a defective and dangerous state when presented for inspection. These factors contributed to a finding that the licence should be revoked with immediate effect in the interests of public safety. As a result of the Driver's conduct members

considered him to be a risk to public safety and not a fit and proper person to hold a hackney carriage/private hire vehicle driver's licence.

The committee's decision and reasons therefore were conveyed to the Driver and he was advised of his right to appeal against the decision to the Magistrates Court.

[Councillor Pete Prendergast took no part in the discussion or voting on this matter as he had not been present throughout the duration of the item]

6 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 14/0123/TXJDR

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. 14/0123/TXJDR 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 disclosed relating to three offences between 1989 and 2014;
- (iii) the Applicant having previously held a licence and had been before the Licensing Committee on a separate occasion to answer for the most recent conviction in 2014 – a final warning had been issued on that occasion;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Driver having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Driver was in attendance together with his representative and confirmed he had received the report and committee procedures. The Licensing Officer (NJ) introduced the report and explained that the Applicant had been before the committee previously regarding his most recent conviction and had been found fit and proper to hold a licence. However because the licence had lapsed, and in light of the convictions, the new application required committee approval.

The Driver's representative explained that members had already adjudicated on this case and had allowed the Driver to retain his licence. He also attested to the Driver's good character and advised he was a valuable member of the workforce. The Driver accepted responsibility for his failure to renew the licence and apologised for the oversight. In mitigation he had not received a renewal reminder from the licensing authority. Officers confirmed there may have been a discrepancy over correspondence but the onus was on the licence holder to ensure the timely submission of a renewal application. In making a final statement the Driver spoke of his regret that the matter had to be brought before the committee and confirmed no incidents had occurred since his 2014 conviction.

The committee adjourned to consider the case and it was –

RESOLVED that the application for a hackney carriage and private hire vehicle driver's licence from Applicant No. 14/0123/TXJDR be granted.

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

During consideration of the application members had taken into account the Licensing Committee's previous finding that the Applicant was a fit and proper person to hold a licence. Members found no issues since then to change that view and decided to grant the application on the basis that the previous warning issued to the Applicant regarding his future conduct would stand. The Applicant was also advised that regardless of whether or not a renewal reminder was sent by the licensing authority it was his responsibility to ensure timely renewal of his licence.

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

7 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/0896/TXJDR

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

- (i) the suitability of Driver No. 15/0896/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 9 penalty points on her DVLA Driving Licence;
- (ii) details of the motoring convictions having been provided spanning a period 2013 – 2015 including speeding and breach of requirements as to control the vehicle;
- (iii) the Council's current policy with regard to the relevance of convictions, and
- (iv) the Driver having been invited to attend the meeting in support of her licence review and to answer members' questions thereon.

The Driver confirmed she had received the report and committee procedures. The Licensing Officer (JT) introduced the report and detailed the facts of the case.

The Driver addressed the committee and accepted responsibility for the motoring convictions. She provided a detailed explanation of the circumstances surrounding each of the motoring offences, expressed remorse over the incidents, and gave assurances as to her future conduct. She also responded to members' questions regarding her driving history and clarified particular aspects of the motoring offences. When given the opportunity to make a final statement the Driver confirmed she had nothing further to add.

The committee adjourned to consider the case and it was –

RESOLVED that the renewal application for a hackney carriage and private hire vehicle drivers licence from Driver No. 15/0896/TXJDR be granted with a formal warning issued as to future conduct.

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

Members considered the report and explanation provided by the Driver in this case. The committee had found the Driver to be open and honest in her explanations and in response to questions and had been reassured with regard to her future conduct. Consequently members considered the Driver to be a fit and proper person to hold a licence and agreed to issue a formal warning in this case in light of the motoring convictions received.

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

At this juncture (10.50 a.m.) the meeting adjourned for a refreshment break.

OPEN SESSION

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

8 PRESENTATION BY FLEET SERVICES ON VEHICLE SAFETY AND LICENSING

The Transport Manager (TM) delivered a power point presentation on his role and responsibilities together with that of Fleet Services before explaining the relevance to taxi and private hire licensing. Whilst there were some good licensed operators in Denbighshire there was a need to improve the way operators managed and maintained their vehicles generally. Consequently the TM advocated adoption of a minimum standard for operators as part of policy conditions using a traffic light system similar to the Driver and Vehicle Standards Agency (DVSA) operator scoring system or the food system. Such a system would enable enforcement activity to target poor performers.

During a detailed debate members raised questions with the TM regarding various aspects of fleet management and the approach taken by Denbighshire to its own transport fleet and management responsibilities. In considering matters relating specifically to taxi and private hire licensing members reflected on measures introduced in order to raise standards such as the penalty point system. A scheme to provide a consistent approach to setting minimum vehicle standards via the management and maintenance of vehicles was welcomed to further raise standards of both taxis and private hire vehicles licensed by Denbighshire.

Main issues of debate focused on the following –

- whether there was a conflict of interest in cases where taxi firms had their own garages for MOT testing, and similarly, for the Council when carrying out MOTs on its own vehicles – the TM favoured the Council testing all licensed vehicles to ensure a consistent approach but accepted it could present difficulties given the size of the county. The MOT regime was administered independently by a DVSA examiner in all cases but it was a Denbighshire council licence plate displayed on the vehicle which reflected on the authority and testing was more subjective if carried out in a number of different garages

- cases brought before the committee regarding poor vehicle standards tended to relate to owner/drivers with larger taxi firms having some form of maintenance system in place; concerns were raised that the responsibility for the condition of licensed vehicles remained solely with the owner/driver with taxi companies sub-contracting work being absolved of any responsibility
- members supported challenging poor operators and highlighted the need to educate vehicle owners about their responsibilities to ensure vehicles met all requirements on a daily basis and not to use the MOT as a maintenance test
- some support was expressed for the use of standardised vehicles and colour schemes as a means of raising standards and officers agreed to look further into the matter – it was also suggested that vehicles could display a sign providing details of testing in order to provide customer assurance
- the need for quality licensed vehicles was emphasised to ensure high vehicle standards and convey a professional image of Denbighshire. The TM explained that changes to policy and conditions and an effective enforcement regime to target poor operators would be the best way to achieve that aim. The Public Protection Business Manager advocated a collaborative approach with Fleet Services in order to implement a robust process to improve standards.

The Chair thanked the Transport Manager for his informative presentation.

RESOLVED that the presentation from Fleet Services be noted.

[At this point in the proceedings Councillor Hugh Irving left the meeting].

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 Paragraph 12 of Part 4 of Schedule 12A of the Act.

9 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 14/0892/TXJDR

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

- (i) the suitability of Driver No. 14/0892/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 20 penalty points under the Council's penalty point scheme for presenting a licensed vehicle for test in an unsafe and dangerous condition;
- (ii) details of the defects noted following presentation of the vehicle for a Compliance/MOT test had been included within the report together with associated witness statements and documentation, and
- (iii) the Driver having been invited to attend the meeting in support of her licence review and to answer members' questions thereon.

The Driver was not in attendance and had failed to contact officers regarding her licence review. Officers confirmed the necessary notification had been sent and on that basis members were content to hear the case in the Driver's absence. The Enforcement Officer introduced the report and detailed the facts of the case. In cases where 20 or more penalty points had been accrued in a 24 month period the matter was referred to committee for review.

The Enforcement Officer responded to questions confirming the Driver owned the vehicle in question but operated via a taxi firm. He confirmed the vehicle's previous six month compliance check had been undertaken and the Driver had no previous penalty points.

The committee adjourned to consider the case and it was –

RESOLVED that the hackney carriage and private hire vehicle driver's licence issued to Driver No. 14/0892/TXJDR be revoked on public safety grounds with immediate effect.

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

During deliberations members carefully considered the evidence presented in this case. The committee expressed serious concerns regarding the unsafe condition of the licensed vehicle as presented for testing and dangers posed to the public as a result. Members found the state of the vehicle so severe that a responsible driver would have known there was a problem with the vehicle and should have taken sufficient measures to address that. The Driver had operated the vehicle in an unsafe condition without due regard for public safety and in the absence of any representations from the Driver no assurance could be taken as to her future conduct. Consequently the committee found the Driver was not a fit and proper person and decided to revoke the licence on public safety grounds.

10 REVIEW OF A LICENCE TO DRIVE PRIVATE HIRE VEHICLES - DRIVER NO. 15/0123/TXPHD

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

- (i) the suitability of Driver No. 15/0123/TXPHD to hold a licence to drive private hire vehicles following accrual of 20 penalty points under the Council's penalty point scheme for driving an unlicensed vehicle;
- (ii) details and circumstances relating to the offence having been provided (a summary of facts together with associated witness statements and documentation had been attached to the report), and
- (iii) the Driver having been invited to attend the meeting in support of her licence review and to answer members' questions thereon.

The Senior Community Safety Enforcement Officer introduced the report and detailed the facts of the case. In cases where 20 or more penalty points had been accrued in a 24 month period the matter was referred to committee for review.

The Driver had submitted a letter of mitigation to the committee (circulated at the meeting) as she had been unable to attend. She explained that her actions had been spur of the moment and undertaken with the best intentions.

The officers clarified particular issues in response to questions thereon, including appropriate procedures to follow in such cases involving contract work.

The committee adjourned to consider the case and it was –

RESOLVED that a formal warning be issued to Driver No. 15/0123/TXPHD as to her future conduct.

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

Members considered the evidence presented and the letter of mitigation provided by the Driver in this case. The committee took an extremely serious view over the use of an unlicensed vehicle and in no way condoned such use. However, taking into account the evidence and mitigation provided, including the particular circumstances of this case and attempts made to fulfil the contract, members considered the Driver to be a fit and proper person to hold a licence. Nonetheless the committee felt the Driver should have taken further steps to make alternative arrangements to resolve the situation and in view of the seriousness of the offence it was appropriate that a stern warning be issued regarding future conduct and the Driver be reminded that the penalty points remained valid for two years. The committee was also keen for the Driver to be made aware of the alternative steps to be taken in such a situation without resorting to the use of an unlicensed vehicle.

OPEN SESSION

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

11 PROPOSED REVIEW OF STATEMENT OF LICENSING POLICY

The Licensing Officer (JT) submitted a report by the Head of Planning and Public Protection (previously circulated) presenting the draft Statement of Licensing Policy for approval to formal consultation. In order to comply with statutory timescales the revised Policy must be effective from January 2016.

The Statement of Licensing Policy established a local framework for decision making when considering applications for relevant permissions or variations to existing terms and conditions. Members were advised of a collaborative approach carried out by North Wales authorities in preparation for the Policy review together with proposed revisions taking into account legislative changes. The final draft was expected to be ready for public consultation by October/November 2015.

Councillor Bill Cowie referred to paragraph 3.2.1 and queried whether Temporary Event Notices should also be subject to conditions to reflect any local crime prevention strategies or initiatives. Officers agreed to consult with colleagues in that regard and amend if necessary. Members noted an amendment to the recommendation to better reflect the fact that the draft policy may be changed as a result of the ongoing collaborative approach. Consequently it was –

RESOLVED that the draft Statement of Licensing Policy be approved for public consultation and that power be delegated to the Head of Planning and Public Protection to agree any changes arising from the collaboration project prior to consultation.

12 REVIEW OF CURRENT PENALTY POINTS POLICY AND PROCEDURE

The Public Protection Business Manager submitted a report by the Head of Planning and Public Protection (previously circulated) seeking approval of the revised Penalty Point Policy and Procedure for formal consultation. The document detailed how the Council dealt with minor breaches in respect of taxi licensing.

The Licensing Committee had approved the Penalty Point Policy and Procedure in September 2014 and requested an annual progress report on its implementation. A breakdown of points awarded had been included within the report and members' attention was drawn to a number of issues raised since the scheme's introduction including the level of awarded points for particular breaches. Consequently amendments to the scheme had been proposed which required formal consultation. Particular attention was drawn to the proposal for dealing with breaches resulting in a single award of 20 penalty points which were currently submitted to committee. To enable matters to be dealt with in a timely manner it was proposed that those cases be considered by either the Head of Planning and Public Protection or Head of Legal, HR and Democratic Services in consultation with the Chair or Vice Chair of the Licensing Committee.

Members considered the document and noted the proposed increase in penalty points for particular breaches and also proposed the following amendments –

- due to the increase in vehicle safety defects reported to the committee and given the need to raise vehicle standards and ensure public safety, members felt that an increase to 10 penalty points should be applied to offences involving vehicle defects where there was an immediate safety issue. This ruling applied to points 1a), 1b), 1c), 1d), 1e) and 1m) within the scale of penalty points (page 25 of the report), and
- members considered that the licensed driver of a licensed vehicle had a duty of care for the vehicle regardless of whether or not they owned the vehicle – consequently it was agreed that the driver, proprietor and/or operator of the licensed vehicle could be held accountable for breaches depending on the circumstances of the offence which should be reflected within the documentation.

In light of the above revisions to the draft policy it was agreed that the final draft be brought back before the committee for formal endorsement regardless of whether any relevant representations were received in response to formal consultation.

RESOLVED that –

- (a) *the information provided on the breakdown of the points issued as detailed in the report be acknowledged;*
- (b) *subject to the above changes officers be authorised to start formal consultation on the proposed revisions to the Penalty Point Policy and Procedure as detailed within the report, and*
- (c) *following consultation a report on the final draft of the Penalty Point Policy and Procedure together with any relevant representations received be brought back to the committee for formal approval.*

13 LICENSING COMMITTEE FORWARD WORK PROGRAMME 2015/16

A report by the Head of Planning and Public Protection was submitted (previously circulated) on the Licensing Committee's future work programme for 2015/16.

An item on the scheme to set minimum standards for licensed vehicles as discussed earlier on the agenda would be included in the work programme for either December or March.

RESOLVED that the Licensing Committee's work programme be approved.

The meeting concluded at 1.00 p.m.