

## LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, County Hall, Ruthin on Wednesday, 5 December 2012 at 9.30 am.

### PRESENT

Councillors Joan Butterfield, Bill Cowie, Richard Davies, Stuart Davies (Chair), Barry Mellor, Win Mullen-James, Arwel Roberts and Cefyn Williams

**Observers:** Councillors Meirick Lloyd Davies and David Simmons

### ALSO PRESENT

Principal Solicitor (AL); Licensing Officers (NJ & JT), Senior Community Safety Enforcement Officer (TWE) and Committee Administrators (KEJ & SLW).

#### 1 APOLOGIES

Councillors Brian Blakeley, Hugh Irving and Peter Owen.

#### 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 12 September 2012 were submitted.

#### **Accuracy –**

Page 7 – Item No. 5 Review of Three Licences – The Chair referred to the duplication of the Driver Number which needed to be amended. [Driver No. 040298 at (3) Appendix 2 should be amended to No. 040448.]

Councillor Joan Butterfield advised that her apologies for absence at the last meeting had not been recorded within the minutes.

**RESOLVED** that, subject to the above, the minutes of the meeting held on 12 September 2012 be received and confirmed as a correct record.

At this point the Chair indicated his intention to vary the order of the agenda to accommodate those individuals who were attending the meeting in support of their applications/licence reviews and to hear their cases before any other business.

## **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 item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.

### **5 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - APPLICANT NO. 044881**

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

- (i) an application received from Applicant No. 044881 for a licence to drive hackney carriage and private hire vehicles;
- (ii) the Applicant having been convicted of Failing to Provide a Specimen for Analysis (being in charge of a motor vehicle) on 13 October 2010 and disqualified from driving for 16 months (reduced to 12 months following completion of a course) and fined £160.00;
- (iii) the Applicant having held a licence to drive hackney carriage and private hire vehicles since 2006 and had been driving a licensed vehicle at the time of the offence (the Applicant had since advised that he had not been carrying fare paying passengers when the offence took place);
- (iv) the Applicant having failed to notify the Licensing Authority of the offence within seven days in accordance with licensing conditions, instead allowing his licence to lapse in December 2010;
- (v) the Council's current policy with regard to the relevance of convictions, and
- (vi) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Licensing Officer (JT) provided a summary of the report and advised that the Applicant was in attendance at the meeting. She indicated that the matter had been brought before the committee to assess the Applicant's suitability in view of the relatively short period free from driving offences.

The Applicant addressed the committee in support of his application expressing his remorse over the offence. He also apologised for his failure to notify the Licensing Authority of the conviction which had been due to the confusion and stress he had experienced over the incident. He responded to members' questions regarding the circumstances surrounding his conviction and failure to provide a specimen for analysis, and confirmed that he had previously held a taxi licence without incident since 2006. In closing the Applicant advised that he had attended a course recommended by the court and had learnt lessons from that. He reiterated his deep regret and assured members that there would be no repeat incident.

At this juncture the committee adjourned to consider the case and it was –

**RESOLVED** that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 044881 be granted and a warning issued regarding the seriousness of his offence and to his future conduct.

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

Having considered the evidence provided by the Applicant the committee was persuaded that the offence was an isolated incident and found the Applicant to be genuine in his assurances that it would not be repeated. They had also taken into account the Council's current policy with regard to the relevance of convictions and noted that granting the application was in line with their own policy and the timeframe provided for the Applicant to be free from convictions relating to drink. Accordingly members considered the Applicant to be a fit and proper person to hold a hackney carriage and private hire vehicle drivers licence but felt it was appropriate to issue a warning in light of the offence committed.

The Chair conveyed the committee's decision and reasons for that decision to the Applicant.

## **6 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE VEHICLES - APPLICANT NO. 044879**

A confidential report by the Head of Planning, Regeneration and Regulatory Services (previously circulated) was submitted upon –

- (i) an application received from Applicant No. 044879 for a licence to drive hackney carriage and private hire vehicles;
- (ii) the officers having not been in a position to grant the application in light of the information revealed following an enhanced disclosure from the Criminal Records Bureau (CRB);
- (iii) a summary of the convictions disclosed having been provided which related to a number of offences spanning a period from 1982 to 1995;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his application and to answer members' questions thereon.

The Licensing Officer (JT) provided a summary of the report and advised that the Applicant was in attendance at the meeting. She indicated that the matter had been brought before the committee to assess the Applicant's suitability to hold a licence given the nature of the convictions.

The Applicant addressed the committee in support of his application advising that he was an experienced driver having held a DVLA driving licence for years free of motoring convictions. He considered himself to be good with the public and

believed he could provide a valuable public service. He also expressed his regret over his past advising that he had turned his life around since that time. In response to questions the Applicant detailed his family commitments and responsibilities and his previous employment history. He also spoke of his desire to gain employment as a licensed driver which he believed would be a positive move.

At this juncture the committee adjourned to consider the case and it was –

***RESOLVED*** that the application for a hackney carriage and private hire vehicle drivers licence from Applicant No. 044879 be granted.

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

Members noted that the offences were spent, had taken place a significantly long time ago, and that the Applicant had been free from convictions for approximately seventeen years. Consequently members accepted the Applicant's submission that he had turned his life around since that time and noted his family circumstances and responsibilities. The committee also noted that granting the application was in line with their own policy regarding the relevance of convictions and the timeframe provided for the Applicant to be free from convictions. Accordingly members considered the Applicant to be a fit and proper person to hold a hackney carriage and private hire drivers licence.

The Chair conveyed the committee's decision and reasons for that decision to the Applicant.

## **7 REVIEW OF TWO LICENCES TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES**

The Licensing Officer (JT) submitted a confidential report by the Head of Planning and Public Protection Services (previously circulated) seeking members' consideration of the suitability of two Drivers numbered 040740 and 041605 (corresponding individual reports listed at Appendix 1 and 2 respectively to the main report) to continue as licensed drivers following their failure to comply with the Council's requirement to successfully undertake a driver knowledge test within the designated timescale.

Members considered the individual circumstances relating to each Driver separately, treating each case on its own merits as follows –

### **(1) Driver No. 040740 (Appendix 1) – Renewal Date 31 December 2011**

Five reminders had been issued to the Driver since his licence renewal and he had attended the last meeting of the Licensing Committee to explain the reasoning behind his failure to take the knowledge test. The committee had resolved to defer consideration of the Driver's suitability to their next meeting to provide a further opportunity for the Driver to sit the knowledge test. The Licensing Officer was pleased to report that the Driver had since successfully passed the test. Consequently it was –

**RESOLVED** that the successful completion of the driver knowledge test by Driver No. 040740 be noted and no further action be taken.

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

The Driver had now complied with the Council's requirement to successfully undertake a driver knowledge test and therefore it was considered that no further action was required.

**(2) Driver No. 041605 (Appendix 2) – Renewal Date 31 December 2011**

Five reminders had been issued to the Driver since his licence renewal but he had made no attempt to contact officers. On 21 September 2012 the Driver had been informed that the matter would be referred to the Licensing Committee for consideration. No response had been received from the Driver and he was not in attendance at the meeting.

At this juncture the committee adjourned to consider the case and it was –

**RESOLVED** that Driver No. 041605 be suspended pending his successful completion of the driver knowledge test. Failure by the Driver to successfully undertake the test by the committee's next meeting (6 March 2013) would result in the matter being brought back before that committee for determination. Successful completion of the test within the suspension period would result in the suspension being lifted.

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

The committee considered that the Driver had been given sufficient opportunity in which to undertake the driver knowledge test. Accordingly the committee considered it appropriate to suspend the Driver's licence until such time as he passed the knowledge test. Failure by the Driver to take and successfully pass the test would result in the matter being brought back before the committee's next meeting when serious consideration would be given to revoking his licence on the basis that he was not a fit and proper person to hold a licence.

**8 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 043844**

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

- (i) the suitability of Driver No. 043844 to hold a licence to drive hackney carriage and private hire vehicles;
- (ii) the Driver having accrued 12 penalty points on his DVLA licence within a period of three years but had been permitted to retain his DVLA licence by Prestatyn Magistrates who had accepted that a disqualification would cause exceptional hardship in his case;

- (iii) details of the endorsements on the Driver's DVLA Licence having been provided, three of which related to the use of a mobile phone whilst driving a vehicle;
- (iv) the Council's current policy with regard to the relevance of convictions, and
- (v) the Applicant having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Licensing Officer (JT) provided a summary of the report and confirmed that the Driver had been cooperative throughout the process. Members noted that the Driver was not present at the meeting despite being invited to attend.

Members considered the facts of the case and after deliberation it was –

***RESOLVED*** that Driver No. 043844 be suspended from driving hackney carriage and private hire vehicles on public safety grounds and that he be required to undertake a Driving Awareness Course prior to the matter being brought back before the committee's next meeting in order to further assess his suitability to continue as a licensed driver and reconsider the suspension imposed.

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

Having considered the facts of the case members had serious concerns regarding the repeated offence of using a mobile phone whilst driving which demonstrated the Driver's disregard for the law and public safety. Grave concerns were also expressed regarding the serious implications of the Driver's actions with potentially fatal consequences. However the committee considered that the Driver would benefit from attending a Driving Awareness Course in order to modify his behaviour. Consequently the committee requested that the Driver attend their next meeting in order to further assess his suitability to continue as a licensed driver following his completion of the Driving Awareness Course.

[Councillor Joan Butterfield asked that it be recorded that she voted against the above resolution.]

At this juncture (10.40 a.m.) the meeting adjourned for a refreshment break.

## **OPEN SESSION**

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

## **9 LICENSING COMMITTEE FORWARD WORK PROGRAMME**

The Licensing Officer (NJ) submitted a report by the Head of Planning, Regeneration and Regulatory Services (previously circulated) seeking members' approval of the Licensing Committee's forward work programme (Appendix 1 to the report) and priorities for the Licensing Administration Section for 2013/14.

The main drivers for the priorities were the Council's duties and responsibilities in relation to the licensing function, and the effective regulation, control and enforcement of Licensees and commitment to safer communities. Each of the identified priorities had been scheduled within the committee's work programme and entailed a review of the following areas –

- House to House Collection and Street Collection Policies
- Rhyl Market Regulations
- Hackney Carriage/Private Hire Driver policy and conditions
- Hackney Carriage/Private Hire Vehicle and Operator policy and conditions
- Fees and Charges

Members accepted the priorities for the Licensing Section and were content with the timescales detailed within the committee's forward work programme and it was –

**RESOLVED** that the Licensing Committee Work Programme (attached at Appendix 1 to the report) and the Priorities for the Licensing Administration Section for the year 2013/14 be approved.

## **10 UPDATE ON REVIEW OF LICENSING FEES AND CHARGES**

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection Services (previously circulated) updating members on progress made with the review of the licensing fees and charges for 2013/14. A sample timesheet used in the calculation process had been attached to the report.

The committee was advised of the comprehensive review of each licensing function and the methodology used in order to set an appropriate level of fees together with the difficulties involved within the process. The recovery of costs for the Licensing software would also need to be factored into any fees and charges. Specialist legal advice was being sought on the calculation of licensing fees in order to avoid any legal challenges. It was anticipated that a full review of the fees and charges would be submitted to the next meeting of the committee in March 2013.

Members took the opportunity to raise questions with the officers and sought clarification on whether various aspects of the licensing function could be re-charged in order to ensure a self financing function. A particular query was raised regarding the costs incurred for the Licensing Committee such as members' and officers' time. The Licensing Officer (NJ) responded to members' questions advising that, where possible, the licensing fees charged aimed to recoup the cost of administering the function and that specialist legal advice was being sought to ensure the calculation of fees was appropriate for each individual function. Advice was also being sought as to whether time spent at Licensing Committee could be offset against licensing fees. Further information would need to be sought from the licensing budget holders in order to fully answer members' questions regarding specific expenditure on particular functions. It was noted that Emlyn Jones had recently been appointed Public Protection Manager with responsibility for the licensing function.

Councillor Joan Butterfield referred to the licensing training required by all committee members and queried the role of observers at Licensing Committee and the extent their involvement was permitted in matters being considered. The Principal Solicitor agreed to check the issue with the Monitoring Officer and report back.

The committee acknowledged the time and effort spent on the review and took the opportunity to thank the officers for their hard work.

**RESOLVED** that –

- (a) *the report be received and noted, and*
- (b) *a full review of fees and charges be submitted to a future meeting of the Licensing Committee.*

## **11 POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011 - LATE NIGHT LEVY AND EARLY MORNING RESTRICTION ORDER**

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection Services (previously circulated) outlining the new powers available to the Licensing Authority from 31 October 2012 under amendments to the Licensing Act 2003 to make Early Morning Restriction Orders (EMRO) and impose Late Night Levies (LML).

Members were provided with some background information regarding the introduction of EMROs and LNLs which were intended to tackle alcohol related crime and disorder and to help to pay for extra enforcement costs associated with late opening premises. Key points of note included –

### **LATE NIGHT LEVIES (LNLs)**

- powers for local authorities to introduce a charge for premises selling alcohol late at night for the extra enforcement costs generated for police and local authorities
- if introduced the Council would need to decide the time at which the levy applied in the area (restricted to between midnight and 6.00 a.m.) and what exemptions and reductions should apply
- the levy would need to be applied to all premises (unless an exemption category applied) selling alcohol in the levy period and could not be confined to a particular town or area
- following deductions by the local authority for administering and introducing the scheme at least 70% of the amount must be passed to the Police
- the Police did not have to spend their proportion of the levy in local areas where it had been collected or on policing associated with alcohol related crime and disorder although North Wales Police had indicated they would spend the levy on licensing matters if it was introduced
- details of the charges to premises if introduced based upon rateable value
- approximately 175 premises would be affected by the levy.

## **EARLY MORNING RESTRICTION ORDERS (EMROs)**

- an EMRO would apply to premises licences, club premises certificates and temporary event notices that operated within the specified EMRO area
- there was a requirement to advertise the proposal to make the EMRO and local authorities needed to demonstrate they had evidence to justify doing so and to consider representations before its introduction.

During consideration of the report members took the opportunity to clarify a number of issues with the officers regarding the new powers available to make LNL and EMROs. Members noted that the levy had been set at a national level and raised concerns regarding the significant charges which would be imposed on premises across the county if the Council chose to introduce the levy regardless of whether or not those premises were located in particular problem areas in terms of alcohol related crime and disorder. The committee recognised that businesses were already struggling in the current economic climate and felt that the introduction of a levy on licensed premises would likely cause many of them to go out of business. The Council was working hard to regenerate its towns and communities and the late night economy and the committee considered the introduction of such a hefty levy would further damage the local economy. It was noted that the Police were in favour of the introducing a levy and the revenue it would bring and had indicated that, although there was no requirement, they would spend that revenue on licensing matters. However, members noted that the Council would have no control over the allocation of that revenue and were concerned that the local authority would be responsible for collecting the levy and if premises did not pay then the Council would still be liable for that fee. With regard to the introduction of EMROs the Chair felt they might prove a useful tool in tackling local problem areas but during discussion it was noted that there were existing tools which would prove more effective such as bringing about Reviews of premises licences.

The committee noted that the introduction of a Levy or EMRO would need to be decided upon at County Council and it was –

### ***RESOLVED that –***

- (a) the content of the report on Late Night Levies and Early Morning Restriction Orders be noted, and*
- (b) the making of Early Morning Restriction Orders and the imposition of Late Night Levies not be supported and the views of the Licensing Committee be submitted to County Council when considering this matter.*

The meeting concluded at 11.25 a.m.