

## LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in Council Chamber, Russell House, Rhyl on Wednesday, 6 March 2013 at 9.30 am.

### PRESENT

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

### ALSO PRESENT

Principal Solicitor (AL), Head of Planning and Public Protection (GB), Licensing Officers (NJ & JT), Senior Community Safety Enforcement Officer (TWE), Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

#### 1 APOLOGIES

Councillor Joan Butterfield

#### 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

The minutes of the Licensing Committee held on 5 December 2012 and the Special Licensing Committee held on 24 January 2013 were submitted.

**RESOLVED** that the minutes of the meetings held on 5 December 2012 and 24 January 2013 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. 045909

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

- (i) an application received from Applicant No. 045909 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 2009 including incidents relating to drunkenness, violence and dishonesty;
- (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 free from alcohol and often the designated driver for family and friends. He reported upon his part time work as a delivery driver advising that he was also good with customers and wished to make his living as a taxi driver. In response to members' questions the Applicant reported upon his previous occupations over the last few years and his desire for full time employment. He also explained the circumstances surrounding the offences revealed by the criminal record check. In making his final statement the Applicant stressed that he wanted to work and pursue a career as a taxi driver. The Licensing Officer confirmed that the Applicant had disclosed the offences to the best of his knowledge and had fully cooperated with officers during the application process.

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. 045909 be refused.

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

Whilst noting most of the offences had occurred some time ago the committee expressed reservations regarding granting the application in light of the nature of those offences and had not been completely satisfied with the explanations provided by the Applicant in that regard. Members had particular concerns regarding the last two offences committed in 2005 and 2009 regarding drunkenness and having given due regard to the council's policy regarding the relevance of convictions it was considered that, in the circumstances, the Applicant should be

free from such convictions for five years before attempting to apply for a licence. Consequently the committee invited the Applicant to re-apply in twelve months' time.

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

## **OPEN SESSION**

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

### **6 APPLICATION FOR RENEWAL OF A SEX ESTABLISHMENT LICENCE**

The Licensing Officer (JT) submitted a report by the Head of Planning, Regeneration and Regulatory Services (previously circulated) advising that a renewal application for a sex establishment licence had been received from Adult World in respect of premises situated at 43 – 47 Queen Street, Rhyl. She indicated that the North Wales Police had raised no objection to the application and following public notice no objections had been received from members of the public.

The Principal Solicitor drew members' attention to a recent case R (Hemming and Others) v Westminster City Council which involved a legal challenge of licence fees charged for sex establishments. The case established two important principles –

- that where a Council profits from licence fees in that its expenditure is exceeded by its fee income, it must carry the surplus forward in determining the fee for future years, and
- that in authorisation schemes covered by the Provision of Services Regulations, enforcement costs may not be recharged to licensed operators.

Consequently members were advised that some reconsideration of the fee may be required in future because of potential challenges. After a brief discussion it was –

**RESOLVED** that –

- (a) *the application for renewal of a Sex Establishment Licence held in respect of premises at 43 – 47 Queen Street, Rhyl be granted with the option of paying the renewal fee of £2600 in instalments, and*
- (b) *officers be asked to review the current fees for sex establishment licensing in light of the recent case 'R (Hemming and Others) v Westminster City Council' and report back to the committee thereon if necessary.*

## **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.

## **7 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 043120**

[Prior to the commencement of this item the Chair permitted an adjournment to allow for all parties to familiarise themselves with the documentation.]

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

- (i) the suitability of Driver No. 043120 to hold a licence to drive hackney carriage and private hire vehicles;
- (ii) a complaint having been received from a cyclist regarding the conduct of the Driver on two separate occasions on 31 December 2012 and 1 January 2013 with recorded footage of both incidents being made available for the committee to view (a summary of facts together with witness statements, transcripts of conversations recorded and associated documentation had also been attached to the main 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 Licensing Enforcement Officer (HB) introduced the report and detailed the summary of facts of the case. The committee then watched footage relating to both incidents referred to within the report obtained from (1) the complainant's head cam fixed to his cycle helmet, (2) a recording made by the Driver's passenger on her mobile phone/tablet, and (3) clips recorded via Rhyl Town Centre CCTV cameras.

The Driver addressed the committee advising that he became a licensed driver in 2009 and had never before been subject of a complaint. He stated that he had not been aggressive to the cyclist in any way but had asked him to stop riding in the middle of the road because he could cause an accident and was stopping cars overtaking. He denied following the cyclist on 1 January 2013 adding that he had no control over the actions of his passenger.

Members took the opportunity to question the Driver regarding the incidents concerned, particularly referring to the rationale behind his behaviour and his intentions during the incident recorded on 1 January 2013. The Driver responded to questions and denied deliberately following the cyclist or harassing him adding that he had displayed no signs of aggression towards him at any time. He also advised that he was aware of the rules and regulations in both the licensing conditions and the Highway Code. In that regard he accepted that a cyclist should ride away from the kerb in particularly circumstances but felt there was no need to ride in the middle of the road unnecessarily.

In making his final statement the Driver wished to clarify that he had not received a harassment notice from the Police but had been advised of the meaning of harassment and asked to ignore the cyclist in future. In response to a question the Driver indicated that he may have seen the cyclist since then but had no reason to approach him.

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

**RESOLVED** that Driver No. 043120 be issued with a severe warning regarding his behaviour and to his future conduct.

[Councillor Bill Cowie took no part in the discussion or voting on this item as he had not been present throughout the entire proceedings.]

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

Having considered the evidence presented in this case including the recorded footage and the Driver's explanation of events members believed that the Driver had deliberately followed the cyclist on 1 January 2013 and had driven too close and intimidated him. The committee also concluded that the Driver had displayed a lack of knowledge of both the Highway Code and the Council's hackney carriage/private hire licensing conditions, particularly regarding the entitlement of cyclists to drive in the middle of the lane. Consequently the committee determined the Driver's conduct to be inconsistent with that of a professional driver and fell below the required standard in his dealings with the cyclist and therefore a severe warning should be issued regarding his behaviour and future conduct.

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

## **OPEN SESSION**

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

### **8 UPDATE ON REVIEW OF LICENSING FEES AND CHARGES FOR 2013/14**

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection Services (previously circulated) seeking members' approval to retain the current fee structure until such time as the review of licensing fees and charges was completed. The current fee structure had been attached to the report.

The committee was updated on progress made with the review of licensing fees and charges and advised that specialist legal advice was being sought on the calculation of licensing fees in order to avoid any legal challenges. This work would commence shortly following completion of the review of taxi and private hire procedures. In the meantime officers would be attending a course at the end of March on licensing fees and charges. Members were also advised that there was a National Task & Finish Group working under the All Wales Licensing Technical Panel tasked with looking at fees and charges, specifically for taxis.

In view of the above members considered it prudent to retain the current fee structure pending the full review of fees and charges. Members also asked that the recent case 'R (Hemming and Others) v Westminster City Council' involving a legal challenge of fees for licensing sex establishments be taken into account as part of that review together with the court of appeal ruling once known.

**RESOLVED** that the current fee structure for Licensing Fees and Charges (as detailed in the appendix to the report) be retained for 2013/14 pending the outcome of the full review.

## 9 REVIEW OF MARKET CONDITIONS FOR RHYL

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection Services (previously circulated) seeking members' approval of revised conditions for Rhyl Market together with a new fee structure (as set out in Appendix 1 and 2 to the report respectively).

Members were advised that –

- since the establishment of the market in 2011 there had been a number of changes leading to the revision of the conditions to ensure they better reflected current working practices
- permanent planning permission for the market was granted in October 2012
- a Service Level Agreement had been drawn up for Denbighshire Voluntary Service Council (DVSC) to manage and promote ten stalls which would be offered to the community free of charge for up to eight weeks; if the enterprise was successful the stallholders could apply to rent a stall on a permanent basis
- following the purchase and provision of the market stalls (gazebos) it had been possible to simplify the fee structure based on the number of gazebos used as opposed to calculating per metre and fees had been calculated fairly to ensure traders were paying a realistic fee for each gazebo hired.

During consideration of the report members discussed the following issues with officers –

- Councillor Bill Cowie queried whether current stallholders had been consulted on the proposed changes and the Licensing Officer replied that no major materialistic changes had been made and the revisions would ensure more workable, simplified and clear conditions for stallholders
- Councillor Cefyn Williams referred to the management of ten free stalls and queried whether the impact on existing stallholders had been taken into account. The Head of Planning and Public Protection (H:PPP) explained the reasoning behind the decision to support local people and local produce and provided assurances that prospective stallholders would need to meet a certain criteria in order to qualify. He reported upon the promotion of Rhyl Market as a community market with local ownership highlighting the benefits to the local community as a result
- Councillor Win Mullen-James reported upon complaints she had received from the less abled bodied and wheelchair users in the community regarding restricted access on market days and highlighted the need for sufficient room between stalls to allow greater access for those individuals. She also sought assurances regarding the quality of goods to be sold. The H:PPP cautioned against introducing a blanket ruling regarding second hand goods but provided assurances that the quality of merchandise would be vetted and appropriately managed.

**RESOLVED** that the proposed amended Market Conditions together with the proposed fee structure (as detailed in Appendix 1 and 2 to the report respectively) be approved.

#### **10 LICENSING COMMITTEE WORK PROGRAMME 2013/14**

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

**RESOLVED** that the Licensing Committee work programme as detailed within the report be noted.

The meeting concluded at 11.30 a.m.