

LICENSING COMMITTEE

Minutes of a meeting of the Licensing Committee held in the Council Chamber, County Hall, Wynnstay Road, Ruthin on Wednesday, 18 September 2013 at 9.30 am.

PRESENT

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

ALSO PRESENT

Head of Legal and Democratic Services (GW); Licensing Officers (NJ & JT); Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

1 APOLOGIES

Councillors Joan Butterfield, Hugh Irving, Pat Jones and Barry Mellor

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 12 June 2013 and Special Licensing Committee held on 27 June 2013 were submitted.

RESOLVED that the minutes of the meetings held on 12 June 2013 and 27 June 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 attending the meeting in support of their 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 14 of Part 4 of Schedule 12A of the Act.

5 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 044473

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

- (i) the suitability of Driver No. 044473 to hold a licence to drive hackney carriage and private hire vehicles;
- (ii) the Licensing Committee held on 12 June 2013 having deferred consideration of the report in the absence of the Driver in order to provide a further opportunity for him to present his case (an extract of the minutes had been appended to the report);
- (iii) concerns having been raised by Licensing Enforcement Officers regarding the conduct of the licensed driver on a number of separate occasions following an incident on 27 February 2013 (a summary of the facts together with witness statements having been attached to the report), and
- (iv) the Driver having been requested to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver and his Legal Representative confirmed they had received the report and committee procedures. An application was made to stay the proceedings on the grounds that the local authority's legislative powers had been incorrectly referenced in the report. Following an adjournment to consider the submission the Chair advised that the committee had agreed to defer the matter to a special meeting to allow for the inaccuracy to be corrected. For transparency the Head of Legal and Democratic Services repeated the legal advice he had relayed during closed session. After a brief consultation with his client the Legal Representative advised that he was content to continue with the hearing despite the inaccuracy and proceedings were resumed.

The Licensing Officer (JT) introduced the report and case details.

A statement provided by the Driver was read out which provided some background information attesting to his character including employment history, family circumstances and his work within the local community. It was highlighted that he had not been subject of a complaint since becoming a licensed driver in 2006. The Legal Representative responded to the allegations detailed within the report and also presented the following in evidence –

- two witness statements to the incidents on 27 February and 26 March 2013
- transcript of the conversation with the Police Officer on 27 February 2013
- letter dated 22 March 2013 from the Vehicle & Operator Services Agency regarding action taken on 27 February 2013
- email dated 17 September 2013 from North Wales Police in response to a formal complaint relating to the incident on 27 February 2013.

Members questioned the Driver on his version of events and the demeanour he had adopted with various officials on the occasions detailed within the report. The Driver also responded to questions raised regarding his dealings with the licensing officers.

In his final statement the Legal Representative reiterated that correct procedures had not been followed by certain officials on 27 February which had given rise to subsequent events.

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

RESOLVED that the allegations made in respect of Driver No. 044473 had not been proved and no action be taken.

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

Members had carefully considered the report and evidence presented in this case. The committee found no evidence to justify a sanction being imposed and had not been satisfied that the allegations made in respect of the Driver's conduct had been proven. Consequently no further action needed to be taken.

The Chair conveyed the committee's decision and the reasons therefore to Driver No. 044473 and his Representative. He also asked that the Driver co-operate fully with licensing officers in any future dealings.

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

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

A confidential report by the Head of Planning and Public Protection (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 North Wales Police regarding the behaviour of the licensed driver on two separate occasions: 21 February and 6 July 2013 (a summary of facts together with witness statements; transcript of the recorded interview and associated documentation had been attached to the report);
- (iii) Driver No. 043120 having appeared before the Licensing Committee on 6 March 2013 regarding a separate incident and had been given a formal warning regarding his future conduct (an extract of the minutes had been appended to the report), and
- (iv) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was not present and had contacted officers the previous day advising that he would be unable to attend the meeting due to work commitments. He had been advised previously to put in writing any representations he wished to make but

no such representation had been received. In view of the seriousness of the matter the committee agreed to proceed in the Driver's absence.

The Licensing Enforcement Officer introduced the report and detailed the facts of the case. Members considered the evidence presented and it was –

RESOLVED that Driver No. 043120 be suspended from driving hackney carriage and private hire vehicles for a period of three months to take immediate effect on the grounds of public safety in accordance with S.61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976.

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

Members carefully considered the information put before them and had regard to the fact that the Driver had been advised to put his representations in writing but had failed to do so. The committee expressed serious concerns regarding the Driver's conduct and actions as detailed within the report which demonstrated his complete disregard for the law and public safety. The committee's overriding consideration was the safety of the public and members felt the Driver's disregard for public safety meant that his suspension should take immediate effect in order to protect the public. In addition members had regard to a previous warning given to the Driver in respect of his conduct which had also raised public safety concerns.

Members also expressed concern that the Driver was not wearing his badge during the incident on 21 February 2013 which was in breach of his hackney carriage/private hire vehicle licensing conditions and that he appeared not to be aware of that fact. Licensed drivers were required to wear badges to assure the public that they had been licensed and were fit and proper.

7 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 047689

The Chair reported that he had granted an adjournment request in this case from Driver No. 047689. Consequently the matter had been deferred to the committee's next meeting on 4 December 2013.

RESOLVED that the position be noted.

OPEN SESSION

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

8 LICENSING ACT 2003 - LICENSING AUTHORITY AS RESPONSIBLE AUTHORITY

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection (previously circulated) informing members of arrangements made to enable the Local Authority to carry out its functions as a Responsible Authority.

Members were advised of the recent change in legislation which empowered licensing authorities to fulfil the same functions as other Responsible Authorities under the Licensing Act 2003. The importance of achieving a separation of responsibilities within the local authority to ensure procedural fairness and eliminate conflicts of interest was highlighted and details of the existing roles and responsibilities were provided. To ensure an appropriate separation of responsibilities in light of the new powers it was recommended that the Senior Community Enforcement Officer be allocated the role as the Responsible Authority for Licensing.

RESOLVED that the Senior Community Enforcement Officer be delegated the function of Responsible Authority on behalf of Licensing.

9 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 (previously circulated) updating members on progress with the review of the licensing fees and charges for 2013/14.

The prolonged and complex nature of determining the actual cost for administering each function was highlighted together with the implications of a recent High Court judgement, *Hemmings v Westminster City Council* (attached as appendix to the report). The outcome of the judgement clarified what costs could be taken into account when determining fees. An All Wales Licensing Technical Panel had been tasked with looking at fees and charges and officers were actively contributing to that process with regular meetings scheduled throughout the remainder of the year.

In response to questions the Licensing Officer explained the range of factors which determined the level of fees which differed between local authorities. Although a generic fee could not be applied across Welsh authorities the Licensing Technical Panel was working to develop a generic set of procedures for determining fees and charges. Members acknowledged the importance of ensuring the review was conducted thoroughly to avoid any future legal challenges and it was –

RESOLVED that the current fee structure be retained for 2013/14 until such time as the Licensing Technical Panel had agreed on a generic set of procedures for setting fees and charges and the full review has been undertaken.

10 REVIEW OF HOUSE TO HOUSE AND STREET COLLECTION POLICIES

The Licensing Officer (NJ) submitted a report by the Head of Planning and Public Protection (previously circulated) seeking members' review of the draft policies for the allocation and monitoring of Street Collection and House to House Collection permits (attached at Appendix A to the report) following the consultation exercise.

The Licensing Committee on 12 September 2012 had agreed a consultation exercise on the review of policies for charitable collections. The report outlined the consultation process and provided details of the representations received relating to Street Collections (no representations had been received relating to House to House Collections) and the recommended amendments in response thereto.

Members were asked to consider the draft policies in light of the consultation responses received.

Members considered the draft policies together with the consultation responses and were satisfied that the representations had been addressed appropriately.

RESOLVED that the draft policies for House to House and Street Collections as detailed in Appendix A to the report and the proposed amendments as detailed in Appendix C to the report be endorsed and recommended to County Council for approval and adoption.

11 LICENSING COMMITTEE FORWARD 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 11.45 a.m.