

LICENSING REGULATORY COMMITTEE

Proposal to Introduce Guidelines for Late Licensing Applications – Hackney Carriage Proprietor Licences 22nd March 2018

Report of Principal Licensing Officer

PURPOSE OF REPORT

The purpose of this report is to seek the approval of members to introduce guidelines for officers and members to determine late applications for hackney carriage proprietor (vehicle) licences.

Once approved, members should consider the addition of a condition to hackney carriage proprietor licences, outlining the late renewal application guidelines.

This report is public.

RECOMMENDATIONS

- (1) Members are recommended to approve new guidelines for determining late applications for hackney carriage proprietor licences and;
- (2) Authorisation be given to the Monitoring Officer to change the Council constitution and subsequently the scheme of delegation as set out in the proposed guidelines.
- (3) To introduce a hackney carriage proprietor licence condition which stipulates the renewal application procedure as determined by members.

“The licence holder must submit a renewal application before the proprietor licence has expired; if the licence holder does not do so, the renewal application will be refused unless there is a very good reason for the failure and in any case within 72 hours of its expiry. After this time the matter will be referred to Licensing Regulatory Committee to consider exceptional circumstances.”

1.0 Introduction

- 1.1 Members will be aware that at a previous meeting of the Licensing Regulatory Committee on 8th February 2018 a licensed driver was brought before the committee to determine a late renewal application for a hackney carriage proprietor licence.

- 1.2 Following this meeting, concern was expressed from members of the Licensing Regulatory Committee regarding the way in which the application was administered and determined.
- 1.3 The authority to approve late applications has not been delegated to officers, and therefore, without the changes proposed within this report, future similar late applications would need again to be referred to this committee for a decision.
- 1.4 It is therefore proposed to formalise guidelines and officer delegation in which future late applications for the renewal of a hackney carriage proprietor licences may be determined smoothly and quickly without the need for referral to this committee unless in exceptional circumstances.

2.0 Proposed changes and guidance

- 2.1 The introduction of clear guidelines for determining late applications for the renewal of hackney carriage proprietor licences, together with the delegation to approve late applications will help ensure a sensible, proportionate decision-making process going forward.
- 2.2 Proposed guidance and decision making process:

1. If the renewal application is between 1-3 days late, the decision whether to permit the renewal is to be made at officer level. (Principal Licensing Officer or Commercial Protection Manager).

Officers at this stage will take into account the licensing history of the driver and level of compliance shown previously, as well as the circumstances surrounding the reason for the late application.

2. For late renewal applications submitted after 3 days but less than 7 days, council officers will consult (in line with the constitution) with the Chairman of Licensing Regulatory Committee to consider 'exceptional circumstances'. The chairman will review the reasons for the late application, compliance history of the applicant, and officer recommendation before reaching a decision.

3. Any late applications received 7 or more days late will be reported to this committee for a decision.

4. All late applications will be reported to the next Licensing Regulatory Committee following the decision.

Applicants who are refused the renewal of a hackney carriage proprietor licence by Licensing Regulatory Committee or at any stage in the proposed guidelines would have right of appeal to the Magistrates Court.

3.0 Case Law

- 3.1 The following case clearly explains the key points in the determination of late applications for hackney carriage proprietor licences.

EXETER CITY COUNCIL v SANDLE [2011]

s.60 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976
s.43 TOWN POLICE CLAUSES ACT 1847.

A hackney carriage licence was capable of renewal in the sense envisaged by the Local Government (Miscellaneous Provisions) Act 1976 s.60 after the expiration of the one-year period prescribed by the Town Police Clauses Act 1847 s.43. There was no particular period in which it would cease to be capable of renewal but an application received two to three days late would require very good reasons for the delay for it to be entertained by a local authority; delay beyond that would require exceptional circumstances.

The appellant local authority appealed by way of case stated against a decision of a Crown Court that it should have renewed a hackney carriage licence that it had granted to the respondent (S). A condition attached to the licence stated that an application to renew it could not be made until 14 days before it was due to expire and could be made up until the day before it was due to expire. The individual deputised by S to renew his licence had a sick child and through being distracted with that matter and the intervention of a weekend the application to renew was made one day late. The local authority refused to either renew S's licence or grant him a new one. The Crown Court held that notwithstanding that S's licence had expired it was capable of being renewed and ought to have been renewed. It also held that in the circumstances a new licence should be granted to S. *The questions were (i) whether a hackney carriage licence was capable of renewal in the sense envisaged by the Local Government (Miscellaneous Provisions) Act 1976 s.60 before the expiration of the one-year period prescribed by the Town Police Clauses Act 1847 s.43; (ii) whether such a licence was capable of renewal in the same way after the expiration of that one-year period and, if so, when it ceased to be so capable.*

HELD: The word "renew" quite properly could mean "granted afresh" so that it permitted a licence to be granted as a new licence. That was a perfectly normal use of the English language; for example, if one forgot to renew a driving licence before it expired one would say, "I must renew my driving licence". The chief concern expressed by the local authority was that there was a queue of applicants for new licences and that if no application to renew was made in time and it then granted a licence to a new applicant it would find itself in difficulties if late applications for renewal were allowed. The answer to that fear was to impose a condition on the grant of a licence so that an applicant had to make an application to renew before the licence had expired and if he did not do so his application was likely to be rejected unless he had a very good reason for his failure. It was appropriate for a local authority to wait two to three days before it granted a new licence to another party. It would be for an applicant to show that very good reasons existed for his late application for renewal. It would be appropriate for a local authority that processed applications by mail to take account of postal difficulties that might exist. Accordingly, it was appropriate to answer yes to both questions. In relation to the second question, there was no particular period but only in exceptional circumstances would an application for renewal be entertained after a delay of two to three days.

- 3.2 With this judgement in mind members should consider an addition to the Council's hackney carriage proprietor licences conditions which clarifies the renewal application procedure. The suggested wording of the addition is outlined in the recommendations contained within this report.
- 3.3 It would be reasonable to expect an applicant to submit a renewal application before the licence has expired, if the licence holder does not do so, the renewal application should be rejected unless the proprietor has a very good reason for the failure.

Only in exceptional circumstances should a late application for renewal be granted after more than 3 days of its expiry.

4.0 Conclusion

- 4.1 Members are recommended to agree the proposals outlined in this report, including the introduction of guidelines for officers and members to determine late applications and the addition of a condition to hackney carriage proprietor licences.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The proposed procedure and guidelines as set out in the report aim to provide a proportionate, fair and consistent approach in the determination of late licensing applications.

FINANCIAL IMPLICATIONS

There are no financial implications as a direct result of this report.

LEGAL IMPLICATIONS

Any person who is refused the renewal of a hackney carriage vehicle licence would have the right of appeal to the Magistrates' Court.

Any person aggrieved by any conditions attached to such a licence may appeal to a Magistrates' Court.

Any successful appeal costs would have to be met by the Council.

BACKGROUND PAPERS

None

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