

**LICENSING REGULATORY
COMMITTEE**

1.00 P.M.

5TH JUNE 2014

PRESENT: Councillors Margaret Pattison (Chairman), Roger Dennison, Sheila Denwood (for Minute Nos. 1 to 9 only), Jonathan Dixon, Mike Greenall (for Minute Nos. 1 to 10 only), Tim Hamilton-Cox, John Harrison, Billy Hill and Tony Johnson

Officers in Attendance:

Sarah Taylor	Chief Officer (Governance) and Monitoring Officer
Wendy Peck	Licensing Manager
Luke Gorst	Assistant Solicitor
David Eglin	Licensing Enforcement Officer
Susan Clowes	Public Health Team Leader (for Minute Nos. 1 to 5 only)
Jane Glenton	Democratic Support Officer

1 APPOINTMENT OF VICE-CHAIRMAN

The Chairman requested nominations for the position of Vice-Chairman of the Licensing Regulatory Committee for the Municipal Year 2014/15.

It was proposed by Councillor Johnson that Councillor Hill be appointed Vice-Chairman of the Licensing Regulatory Committee for the Municipal Year 2014/15. There being no seconder, the proposition fell.

It was then proposed by Councillor Denwood and seconded by Councillor Harrison that Councillor Greenall be appointed Vice-Chairman of the Licensing Regulatory Committee for the Municipal Year 2014/15. There being no further nominations, the Chairman declared the proposal to be carried.

Resolved:

That Councillor Greenall be Vice-Chairman of the Licensing Regulatory Committee for the Municipal Year 2014/15.

2 MINUTES

The Minutes of the meeting held on 17th April 2014 were signed by the Chairman as a correct record.

3 ITEMS OF URGENT BUSINESS AUTHORISED BY THE CHAIRMAN

There were no items of urgent business.

4 DECLARATIONS OF INTEREST

Councillors Dennison, Johnson and Margaret Pattison declared an interest in Minute No. 5 – Dog Boarding Establishment Licence Condition in that they had attended a Planning

and Highways Regulatory Committee site visit on 31st March 2014 in connection with application number A5 13/01272/FUL - Docker Park, Arkholme.

ITEM SUBJECT TO PUBLIC PARTICIPATION

5 DOG BOARDING ESTABLISHMENT LICENCE CONDITION

The Committee received the report of the Chief Officer (Health and Housing) to enable Members to consider changing a condition attached to commercial dog boarding establishment licences prohibiting dogs from different households being exercised together.

Under the Scheme of Public Participation, Mr. John Tamlin spoke in connection with the report.

The Public Health Team Leader reported that the Animal Boarding Establishments Act 1963 stated that no person could keep a boarding establishment for animals unless they had a licence granted by the local authority, which could stipulate a number of conditions to secure specific objectives in granting the licence. Details were outlined to Members.

It was reported that the Chartered Institute of Environmental Health (CIEH) had published guidance and model licence conditions to ensure a consistent approach in the issuing of licences and in the enforcement of the legislation by local authorities. The Council had adopted the model standards in full some years ago.

The CIEH guidance stated that communal exercise areas should generally be discouraged and communal facilities must not be used by more than one dog at any one time unless they were from the same household. In line with this, the Council's conditions required that dogs from different households must not be exercised together.

It was reported that a licensee had requested that they be allowed to exercise dogs from different households together, in secure paddocks on their premises, which they claimed ensured the dogs had adequate physical exercise in a stimulating environment and resulted in dogs being less stressed.

This would constitute a breach of the Council's conditions and an offence under the legislation. The licensee could, however, appeal to the Magistrates' Court against this condition being attached to next year's licence, which would commence on 1st January 2015.

It was reported that the Council had introduced licences for home boarding of dogs in April 2013 and that, subject to compliance with specific conditions, home boarders were allowed to board up to three dogs maximum from different households at the same time. Dogs would normally be exercised together in these circumstances. Changing the commercial boarding condition would result in consistency between commercial boarders and home boarders.

The CIEH model standards stated that if variations to the model conditions were made, local authorities should bear in mind that the principal aim must still be met. Any licensee wishing to exercise dogs from different households together would have to apply, on an individual basis, to Environmental Health and, subject to compliance with the additional conditions, would have their licence re-issued with the additional conditions attached.

The other six commercial dog boarding establishments currently licensed had been consulted. Six responses had been received. Five licensees disagreed with the suggestion, on the grounds that, in their view, fighting between strange dogs in a strange environment would be inevitable. The sixth licensee would welcome the proposal, particularly for their day boarder dogs, as many of these dogs were referred to the kennels by dog behaviourists with a recommendation that they interact with other dogs, but had concerns that not all boarding kennel operators were trained and experienced in dog behavioural problems and the proposal could potentially put the safety of dogs at risk.

It was reported that an enquiry had been sent out on the Environmental Health online forum asking if any local authorities allowed dogs from different households to be exercised together in commercial boarding kennels. Six responses had been received. Only one local authority had a boarding kennel that exercised dogs from different households together, and those kennels stipulated their own maximum limit of two dogs at any one time. Another local authority did not have a condition prohibiting dogs from being exercised together, and three local authorities stated that they would consider amending this condition, particularly as home boarders were allowed to exercise dogs together.

One of the six respondent local authorities was totally opposed to the proposal on grounds which were reported in detail, and the other five local authorities had suggested conditions, which were reported to Members.

The options and options analysis (including risk assessment) were set out in the report. The officer preferred option was option 1, that communal exercising be approved, subject to the additional licence conditions, as set out in the report.

It was proposed by Councillor Hill and seconded by Councillor Dennison:

“That option 1 be approved, subject to further additional conditions that specific insurance cover be in place for communal exercise and that the Licensing Authority be notified of any incident of fighting or other problems during communal exercise.”

Upon being put to the vote, 8 Members voted for the proposition and 1 against, whereupon the Chairman declared the proposal to be carried.

Resolved:

That communal exercising be approved, subject to the following additional conditions:

- (1) Minimum ratio of one responsible person to be in attendance to every three dogs.
- (2) A maximum of six dogs are any one time, including any resident dogs.
- (3) Owners of dogs must agree in writing to their dogs being exercised with dogs from different households and to their dogs being exercised off lead.
- (4) The proposed exercise area to be approved by Environmental Health as regards security and suitability.
- (5) Any faecal matter must be disposed of immediately to minimise risk of cross-infection.
- (6) Dogs must be assessed by experienced and competent staff prior to communal exercise, and dogs suspected of aggressive/dominant behaviour must be exercised separately.
- (7) Unneutered male dogs must not be exercised together.

- (8) Bitches in season must not be exercised with unneutered male dogs and must not be exercised in communal areas.
- (9) Puppies under six months old must not be exercised with adult dogs.
- (10) Specific insurance cover to be in place for communal exercise.
- (11) The Council to be notified of any incident of fighting or any other problems occurring during communal exercise.

ITEMS NOT SUBJECT TO PUBLIC PARTICIPATION

6 CONFIDENTIAL ITEMS

In accordance with Section 100A(2) of the Local Government Act 1972, the press and public were excluded for the following item of business, because it could include the possible disclosure of confidential information.

7 APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE - MICHAEL DAVID JOHNSON (PAGES 13 - 15)

The Committee received the report of the Licensing Manager to enable Members to consider Mr. Johnson's application for a private hire driver's licence.

Details of the individual case and the Chairman's summary of the decision are set out in confidential minute no. 7, in accordance with Section 100A of the Local Government Act 1972.

Decision of the Committee:

That Mr. Johnson's application for a private hire driver's licence be granted.

8 EXEMPT ITEMS

In accordance with Section 100A(4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following item of business on the ground that it could involve the possible disclosure of exempt information, as defined in paragraph 1 of Schedule 12 of that Act.

9 EXISTING HACKNEY CARRIAGE AND PRIVATE HIRE DUAL DRIVER'S LICENCE - RAYMOND PIERCE (PAGES 16 - 18)

The Committee received the report of the Licensing Manager to enable Members to consider what action, if any, to take in respect of Mr. Pierce's private hire and hackney carriage dual driver's licence.

Details of the individual case and the Chairman's summary of the decision are set out in exempt minute no. 9, in accordance with Section 100A of the Local Government Act 1972.

Decision of the Committee:

That Mr. Pierce's hackney carriage and private hire dual driver's licence be suspended for three weeks.

The meeting adjourned at 3.07 p.m. and reconvened at 3.12 p.m.

Councillor Denwood left the meeting at this point.

10 EXISTING HACKNEY CARRIAGE DRIVER'S LICENCE - DALE KENNETH WILSON

The Committee received the report of the Licensing Manager to enable Members to consider what action, if any, to take in respect of Mr. Wilson's hackney carriage driver's licence.

Details of the individual case and the Chairman's summary of the decision are set out in exempt minute no. 10, in accordance with Section 100A of the Local Government Act 1972.

Decision of the Committee:

That Mr. Wilson's hackney carriage driver's licence be suspended for six weeks.

Councillor Greenall left the meeting at this point.

11 EXISTING HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE - CHRISTOPHER PAUL CONWAY (PAGES 19 - 22)

Committee received the report of the Licensing Manager to enable Members to consider whether there was reasonable cause to suspend or revoke Mr. Conway's hackney carriage and private hire dual driver's licence.

Details of the individual case and the Chairman's summary of the decision are set out in exempt minute no. 11, in accordance with Section 100A of the Local Government Act 1972.

Decision of the Committee:

That no further action be taken in respect of Mr. Conway's hackney carriage and private hire dual driver's licence.

12 PUBLIC ITEMS

The press and public were readmitted to the meeting at this point.

13 ADDITION OF A NEW CONDITION TO BE IMPOSED ON ALL HACKNEY CARRIAGE VEHICLES LICENCES UPON RENEWAL

The Committee received the report of the Licensing Manager to enable Members to consider imposing a new condition on hackney carriage vehicle proprietor licences to take effect on next renewal and, as a consequence, to approve an amendment to the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing document to reflect this.

It was reported that no condition was currently attached to a hackney carriage vehicle licence requiring the proprietor to keep records of the person driving the vehicle at any one time.

The item had previously been on the agenda for the Committee on 27th March 2014 and had been deferred due to an email received from Mrs. Donna Short from the National Private Hire Association, whose email suggested that such a condition would be unlawful and could not be imposed on a hackney carriage vehicle licence because the vehicle could not keep records, only the proprietor or driver.

In her email, Mrs. Short had said that hackney carriage proprietors or drivers did not need to hold an operator's licence (Brentwood –v- Gladen) and could not be required to keep records. In her knowledge there was no other licensing authority in the UK that had been able to uphold this requirement, as the legislation did not allow them to impose it.

Members were advised that the vehicle licence and the proprietor's licence were one and the same thing. There was no difference between a proprietor ensuring that the vehicle had the correct signs, or that a first aid kit and a fire-extinguisher were in the vehicle, and ensuring that an up-to-date log of who was driving the car at any time was in the vehicle.

The case law referred to by Mrs. Short related to whether a person using a hackney carriage vehicle to carry out private hire bookings would require an operator's licence. They clearly did not, and this condition would not require them to have one, nor require proprietors to keep a log of journeys, just of any person driving the vehicle at any given time.

Mrs. Short appeared to be suggesting that only conditions in relation to vehicle appearance and condition could be attached to the vehicle/proprietor's licence. In officers' opinion, this would make nonsense of the two separate provisions set out in Section 47 of the Local Government (Miscellaneous Provisions) Act 1976.

It was proposed by Councillor Dennison and seconded by Councillor Hill:

"That the recommendation set out in the report be approved, and that there be a requirement for the record to be kept for a period of six months."

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be clearly carried.

Resolved:

That the following new condition in relation to hackney carriage vehicle/proprietor licences takes effect upon next renewal and that the Rules, Regulations and Procedures for Hackney Carriage and Private Hire Licensing be amended to reflect this:

"The proprietor of the vehicle shall keep a complete and accurate record of the name of the person driving the vehicle at any time. This information must be kept for a period of six months and produced upon request to an authorised officer or constable."

14 TRAINING FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS

The Committee received the report of the Licensing Manager to seek Members' approval of proposals to introduce new training arrangements for all new applicants for hackney carriage and private hire drivers' licences.

It was reported that at the Committee meeting on 17th April 2014, Members had resolved to remove the requirement for all new applicants for a hackney carriage or private hire driver's licence to complete the BTEC course "Transporting Passengers by Taxi and Private Hire", or to hold an equivalent qualification. The fee for the course at Lancaster and Morecambe College had recently increased from £198 to £675 and Members had considered it too onerous on new applicants to have to pay this.

Members were informed that officers had been in contact with a company called GKC Training, which could offer an NVQ Level 2 in "Transporting Passengers by Taxi and Private Hire" free of charge to applicants. Blackpool College could also offer the NVQ free of charge at present. Lancaster and Morecambe College had indicated that they, too, may be able to offer the NVQ.

It was proposed by Councillor Dennison and seconded by Councillor Johnson:

"That the recommendation set out in the report be approved."

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be clearly carried.

Resolved:

That a new condition be attached to applications for the grant of hackney carriage and private hire drivers' licences requiring applicants to attain an NVQ Level 2 in "Transporting Passengers by Taxi and Private Hire" with immediate effect before the first annual renewal of their licence.

Councillor Harrison left the meeting room during consideration of the following item and did not vote on the matter.

15 CURRENT VEHICLE TESTING PROCEDURE FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

The Committee received the report of the Licensing Manager, which informed Members of the current vehicle testing procedure in relation to hackney carriage and private hire vehicles and asked them to consider whether any other options should be explored.

It was reported that at the meeting of the Committee on 13th February 2014, Members had requested that a report be brought back regarding the revenue raised through MOTs carried out by the Vehicle Maintenance Unit (VMU). All hackney carriage and private hire vehicles licensed by the Authority were subject to a test at VMU before a licence could be issued. The vehicles were then issued with a compliance certificate, which exempted them from requiring an MOT certificate whilst the vehicle was a licensed vehicle.

The cost of the test was £51.50 and was set to recover the recharge from VMU to Licensing. The cost was incorporated in the licence/test fees charged and no revenue was raised.

The Lancaster City Hackney Carriage Proprietors Association had recently questioned whether having the vehicles tested at the Council VMU was the most efficient and cost-effective way of dealing with vehicle tests, and had said that other garages could do the test for £45, which was a saving of £6.50.

It was reported that the process at VMU worked extremely well, due to the knowledge of the mechanics and the co-operation between VMU and Licensing Services. The vehicle testing was consistent and all vehicles were tested to the same high standard.

In officer's opinion, using other garages to undertake the test would not result in a saving, rather it would lead to further administrative work and officer time, and the cost would have to be reflected in the licence fee. The Licensing Authority must consider public safety and ensure that the vehicle tests were consistent and reliable.

It was reported that a small minority of the trade had raised an issue relating to the compliance certificate issued by VMU, which was not registered on line with the Vehicle and Operator Services Agency (VOSA), and they could not, therefore, tax their vehicles on line. It was noted that there were plans to scrap the paper tax disc displayed in a car windscreen. Vehicle owners would still be able to go to the Post Office and tax their vehicles.

It was officers' opinion that options for registering the compliance certificate should be explored, and that any decision should be based on public safety rather than convenience.

It was proposed by Councillor Dennison and seconded by Councillor Dixon:

- "(1) That the current vehicle testing procedures for hackney carriage and private hire vehicles be endorsed.
- (2) That the Chief Officer (Environment) be requested to consider the possibility of VMU being registered online with the Vehicle and Operator Services Agency (VOSA).
- (3) That the Chief Officer (Environment) be requested to consider the feasibility of making arrangements to enable all vehicles, including those with a long wheelbase, to be tested at the VMU."

Upon being put to the vote, 4 Members voted in favour of the proposition and 1 against, with 1 abstention, whereupon the Chairman declared the proposal to be carried.

Resolved:

- (1) That the current vehicle testing procedures for hackney carriage and private hire vehicles be endorsed.
- (2) That the Chief Officer (Environment) be requested to consider the possibility of the VMU being registered online with the Vehicle and Operator Services Agency (VOSA).
- (3) That the Chief Officer (Environment) be requested to consider the feasibility of making arrangements to enable all vehicles, including those with a long wheelbase, to be tested at the VMU.

16 INCENTIVES IN RELATION TO WHEELCHAIR ACCESSIBLE VEHICLES

The Committee received the report of the Licensing Manager, which had been prepared following Members' request for officers to look at the possibility of financial incentives through reduced licence fees for proprietors who voluntarily licensed wheelchair accessible vehicles. It had been suggested that some sort of financial incentive be offered in the form of a reduction in the licence fee.

It was reported that officers would suggest that it would be almost impossible to administer any arrangement whereby a driver of a vehicle was offered a financial incentive through the licence fee, as drivers could move from vehicle to vehicle. The current cost of a driver's licence was already set very low and barely covered the cost of administration.

The licensing of hackney carriage and private hire vehicles aimed to recover, as far as possible, the full cost of administering the scheme and some enforcement costs, as permitted by the legislation. Any reduction offered to proprietors could mean that there would be a shortfall in the fees that would be recovered and the cost would possibly have to be recovered by inflating the fees throughout the rest of the licensing regime, unless the Council was prepared to stand the shortfall, although there was no budget for such a shortfall. Officers did not consider that a small reduction in the fees would serve to encourage proprietors to convert to wheelchair accessible vehicles as the cost of the vehicle would far outweigh any reduction that could be offered.

Officers had consulted with owners of wheelchair accessible vehicles that were not currently required to be wheelchair accessible and they wanted to keep the flexibility and the option of changing the vehicle at any time to a non-wheelchair accessible vehicle. The reaction had been negative.

It was reported that if Members were minded to increase the number of wheelchair accessible vehicles within the hackney carriage fleet, officers would recommend that more time be spent on the matter and discussions be undertaken with the trade to consider what incentives could be offered.

One cost free option would be to advertise all of the mandatory wheelchair accessible vehicles on the Council's website and to publicise via a press release that anyone who would like a list of such approved vehicles should refer to the Council's website.

Some members of the trade had asked about allowing advertising on vehicles, known as bubble wrap advertising. If this were offered only on purpose built wheelchair accessible vehicles, there would be a financial benefit to the proprietor, who could raise revenue through the advertising.

It was proposed by Councillor Johnson and seconded by Councillor Dennison:

- “(1) That the report be noted.
- (2) That full discussions take place with hackney carriage proprietors before a decision is made in relation to any incentives being offered.”

Upon being put to the vote, Members voted unanimously in favour of the proposition, whereupon the Chairman declared the proposal to be clearly carried.

Resolved:

- (1) That the report be noted.
- (2) That full discussions take place with hackney carriage proprietors before a decision is made in relation to any incentives being offered.

17 COMMENCEMENT OF PROSECUTIONS

The Committee received the report of the Chief Officer (Governance) to enable Members to consider the practical, legal and financial implications of the Committee determining whether a prosecution should take place when recommended by officers.

It was reported that the Committee had requested the report at its meeting on 27th March 2014, and wished to consider the implications of a change to the current arrangements whereby the decision to prosecute would be made by the Committee on the recommendation of officers.

The processes leading to prosecution were outlined to Members in detail, together with the main implications of the Committee determining whether a prosecution should take place.

It was reported that detailed consideration of a prosecution at a meeting could result in the deferral of other items of business, causing delay to the consideration of those items or the need for additional meetings.

There would be costs in terms of officer time and possible legal costs, as and when any decisions were tested in the Courts, and through printing bulky prosecution files as part of the agenda.

Aside from the costs, the legal and practical implications of such a change were of more concern. The decision whether or not to prosecute should be based on an assessment of the evidence, which was a matter for legal expertise, and it would be unfair to ask a Committee of the Council to demonstrate the legal expertise required to undertake such an assessment.

Officers were firmly of the view that the suggestion from Members that a potential defendant should be present when the decision to prosecute was made by the Committee was wholly inappropriate. It would be improper for evidence to be discussed with a defendant, or in a defendant's presence, or for a defendant to be asked to comment, unless under caution.

The Committee could leave itself open to claims of predetermination if, having considered evidence, it decided not to prosecute and asked to see a defendant at a future meeting for possible warning, suspension or revocation of a licence.

It was reported that there would be a risk of legal challenge at all stages, the possibility that such challenges might be pursued through the Courts and a risk of increasing legal costs to the Council.

Additionally, individuals would become aware of when their case was to be considered, and could seek to influence the outcome by contacting Members and putting undue pressure on them. Members could receive further contact and questions from individuals after taking a decision to prosecute, and any responses could prejudice proceedings.

It was reported that officers remained firmly of the view that the decision to commence prosecutions for matters within the remit of the Licensing Regulatory Committee should remain delegated to officers.

It was proposed by Councillor Dennison and seconded by Councillor Margaret Pattison:

“That the recommendation set out in the report be approved.”

Upon being put to the vote, 4 Members voted in favour of the proposition and 3 against, whereupon the Chairman declared the proposal to be carried.

Resolved:

That, in view of the legal and practical tasks identified in the report, the commencement of prosecution proceedings remain delegated to officers.

18 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - PROPOSED VARIATION OF HACKNEY CARRIAGE FARES

The Committee received the report of the Licensing Manager to enable Members to consider the results of the consultation with hackney carriage proprietors in relation to the proposed variation of the current level of hackney carriage fares in line with the current Retail Price Index (RPI) rate and to determine whether to approve the new table of fares, as set out in Appendix 1 to the report.

It was reported that Members had agreed an amendment to procedure in relation to the variation of hackney carriage fares at its meeting on 13th February 2014, and to recommend fare proposals in March of each year, taking account of the current annual RPI rate. Hackney carriage proprietors would then be asked to vote on whether an increase was required during that year.

Financial Services had confirmed that the latest available rate of inflation (January) RPI rate was 2.8%. The table set out in the report showed the effects of the proposed variations for the first mile at tariff 1, including a comparison with other local authorities, showing the fares at tariff 1 for two miles, being the lowest common denominator.

It was reported that a ballot had taken place with hackney carriage proprietors. Ninety-eight papers had been sent to the owners of the 108 hackney carriage vehicles currently licensed, and fifteen ballot papers had been returned. Proprietors had been asked if they agreed that an increase in hackney carriage fares was appropriate for the financial year 2014/15, in line with the RPI. Of the fifteen papers returned, eight had said yes and seven had said no.

It was proposed by Councillor Hill and seconded by Councillor Harrison:

“That there be no variation in the hackney carriage fares.”

Upon being put to the vote, 5 Members voted in favour of the proposition and 2 against, whereupon the Chairman declared the proposal to be carried.

Resolved:

That there be no variation in the hackney carriage fares.

.....
Chairman

(The meeting ended at 6.20 p.m.)

**Any queries regarding these Minutes, please contact
Jane Glenton, Democratic Services - telephone (01524) 582068, or email
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