

## Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 13th February, 2007.

**Present:** Cllr Mrs K F Nelson (Chairman), Cllr M Cherrett, Cllr K Dixon, Cllr E Johnson, Cllr C Leckonby, Cllr K Leonard, Cllr R Rix and Cllr F G Salt.

**Officers:** C Barnes, M Vaines (DNS); P K Bell, J Nertney (LD).

**Also in attendance:** For item on Review of Conditions etc - D Walker (Stockton Hackney Drivers Association); For 9 Harland Place - S Catterall (Solicitor for J Graham), J Graham (Applicant); S.P for his item; K.W.R for her item; For M.H item - M.H and M.H (Support for M.H); S.A and two Parking Enforcement Officers for S.A item.

**Apologies:** Cllr Coombs, Cllr Kirton, Cllr Narroway, Cllr Mrs Trainer, Cllr Mrs Wade, Cllr Woodhead and Cllr Woodhouse.

### 988 Minutes

The Minutes of the meeting held on 28th November 2006 were signed by the Chairman as a correct record.

### 989 Declarations of Interest

Councillor Mrs Nelson declared a personal and prejudicial interest in respect of the item on the application for grant of permits under S34(5E) Gaming Act 1968 and Schedule 3 Lotteries and Amusements Act 1976 - 9 Harland Place, Norton as she had made a representation objecting to the proposal.

Councillor Mrs Nelson declared a personal and prejudicial interest in respect of the item on S.P as knew S.P on a personal level.

### 990 Review of Conditions, Polices and Procedures Relating to Hackney Carriages, Private Hire Vehicles and their Drivers and Operators

Consideration was given to a report which detailed a proposal to carry out a full and open consultation with the local taxi trade, interested stakeholders and Members on a review of current policies, procedures and conditions relating to the licensing of Hackney Carriages and Private hire Vehicles, Drivers and Operators.

At the time of this meeting there was a mixture of Council policies, licence conditions and byelaws control Hackney Carriages and Private Hire. The Local Government (Miscellaneous provisions) Act 1976 (The 1976 Act) permits the Council to attach conditions to the grant of Private Hire Driver and Operator Licences and Private Hire and Hackney Carriage Vehicle Licences "as it may consider reasonably necessary". The Town Police Clauses Act 1847 permits the Council to make Byelaws to regulate the conduct of Hackney Carriage Drivers. Policies were umbrella conditions which usually act as a pre-requirement to the making of an application. Conditions could not be attached to Hackney Carriage Driver Licences with the current legislation.

The 1976 Act also gave a right of appeal to the Magistrates Courts to any person who was aggrieved by any of the conditions placed on a licence within 21 days of receipt of the licence.

There had been some changes made over the years e.g. the requirement for applicants to undergo the DSA Taxi drivers test, and the requirements relating to the licensing of Eastern European drivers, however the policies and conditions relating to the taxi trade had not been reviewed in their entirety for some considerable time.

Whilst officers had been involved in reviewing the accessibility of Hackney carriages in preparation for the introduction of new requirements under The Disability Discrimination Act 1995 (The 1995 Act), additional issues had been raised following meetings with the taxi trade and in relation to complaints about procedural issues.

In addition the Department for Transport had recently published "Taxi and Private Hire Vehicle Licensing: Best Practice Guidance" and the Disability Rights Commission had produced a statutory code of practice "Provision and Use of Transport Vehicles" under new regulations made under The 1995 Act which placed duties on both licensing authorities and the taxi trade to review any practices and procedures that make it impossible or unreasonably difficult for a disabled person to use their services. Copies of these documents had been placed in the Members' library.

The opportunity had therefore been taken to produce a consultation document on what were considered to be the main issues with a proposal that it be circulated for comment to the local taxi trade; groups which represented passengers with special needs; other consumer passenger groups; local interest groups e.g. hospitals, day centres; other transport stakeholders e.g. buses, ring and ride, social services/education transport services; officers and elected Members. A copy of the draft consultation document was attached to the report.

Following the consultation exercise it was proposed that the results be brought back before the committee for comment prior to any changes to policies and conditions being issued for further consultation or referred to Cabinet.

RESOLVED that a full and open consultation take place with the local taxi trade, interested stakeholders and Members on a review of current policies, procedures and conditions relating to the licensing of Hackney Carriages and Private Hire Vehicles, Drivers and Operators.

#### **991 Application For Gaming Permits - 9 Harland Place, Norton**

Consideration was given to a report which detailed applications for the grant of permits for the use of machines for gaming by way of amusements with prizes and the provision of amusements with prizes by way of prize bingo on premises at 9 Harland Place, Norton, Stockton-on-Tees to which there had been objections from the Ward Councillors.

The application had been received from Luxor Leisure Ltd for the grant of a permit for the use of machines for gaming by way of amusements with prizes under the provisions of Section 34(5E) of the Gaming Act 1968 and for a permit under the provisions of Schedule 3 The Lotteries and Amusements Act 1976 for the playing of prize bingo in respect of a proposed amusement arcade to be

situated at 9 Harland Place, Norton, Stockton-on-Tees.

Copies of the applications were attached to the report.

The Chief Constable, the Chief Fire Officer, and Environmental Health Manager had no objections to the applications.

The Building Control Manager had indicated that he was not in a position to comment at this time as the premises were unoccupied and refurbishment work had not been carried out.

Objections to the applications had been received from Cllr Mrs Nelson and Cllr Frankland, Ward Councillors for this area and copies of their emails were attached to the report.

A copy of Home Office Circular No. 100/1988, in respect of amusement-with-prizes machines was attached to the report for Members information.

Members were respectfully reminded that under the provisions of Schedule 9, paragraph 8(2), The Gaming Act 1968 the local authority had an unfettered discretion as to the grant of a permit under section 34.

Members were also reminded that the council had passed resolutions under the provisions of Schedule 9 not to grant or renew permits relating to specified classes of premises and to limit the number of machines in certain other classes of premises. A copy of minute 894, November 1977, which related, was attached to the report for Members information.

Members were further advised that under the provisions of section 16 (1)(b) The Lotteries and Amusements Act 1976 where a permit under section 34 The Gaming Act 1968 had been issued then a further permit under this section was not required although the conditions under subsection (3) relating to the maximum charges and value of prizes must be adhered to.

If Members were minded to approve this application then under the transitional arrangements for the commencement and implementation of The Gambling Act 2005 the permit would only be valid until 31 August 2007.

The Gambling Act 2005 allowed for licensing authorities to continue to receive applications for a first permit under the existing legislation until 27 April 2007. After this date applications must be made under the new Act.

The Gambling Act 2005 would create three new categories of arcade depending on the type of gaming machine to be offered:

- Adult gaming centres – they would be strictly for over 18s only, and children will not be allowed on any part of the premises.
- Licensed family entertainment centres – children would be allowed to enter and gamble on some machines; other adult machines must be located in over-18 areas.

- Unlicensed family entertainment centres – children would have free access and will be allowed to gamble on the machines.

The above permits under the existing legislation would only be valid until 31 August 2007. If operators wished to continue to operate after this date as either an adult gaming centre or a licensed family entertainment centre then they must apply to The Gambling Commission for an operating licence between 1 January and 27 April 2007 and any personal licences appropriate to the business between 1 January and 29 June 2007. In addition a new application for a premise licence must be made to the licensing authority between 21 May and 30 July 2007.

If they wished to continue to operate as an unlicensed family entertainment centre application for a FEC gaming machine permit must be made to the licensing authority between 21 May and 30 July 2007.

A plan showing the location of the premises was attached to the report.

The applicant (Mr J Graham) and his solicitor (Mr S Catterall) were in attendance at the meeting and were given the opportunity to outline their case.

RESOLVED that the applications for Gaming Permits at 9 Harland Place, Norton be approved.

(Councillor Mrs Nelson declared a personal and prejudicial interest in respect of the above item and withdrew from the meeting)

(Councillor Johnson was in the Chair during consideration of the above item)

## **992 Institute of Licensing Conference 2006**

Members were provided with feedback on the Institute of Licensing Annual Conference, which was attended by Members and officers in November 2006.

The Council was a corporate member of The Institute of Licensing, which was recognised as being the premier organisation for licensing professionals in England, Wales and Northern Ireland representing over 700 practitioners in the public and private sectors. Officers attend northeast regional meetings throughout the year, which provided a forum for discussion, training and continued professional development.

Since the formation of its predecessor, The Local Government Licensing Forum, in 1996 an annual conference and training seminar had been host for the membership.

The Licensing Conference was an approved corporate conference.

Cllr Kirton, Cllr Mrs Nelson, Cllr Woodhead, Jonathan Nertney, Principal Solicitor and Mick Vaines, Principal Licensing Officer attended the conference, which was held in Brighton and attracted over 160 delegates from across the country.

A copy of the President of The Institute of Licensing's welcoming letter to delegates was attached to the report for Members information.

Speakers at this years conference included:

- Richard Caborn MP, Minister for State at Department for Culture, Media and Sport
- Philip Kolvin, barrister, 2-3 Gray's inn Square
- James Button, solicitor, author of Taxis and the Law
- Feargal Sharkey, Chairman of the Live Music Forum
- Professor Colin Manchester, School of Law, University of Birmingham
- Councillor Geoffrey Theobald OBE, Board Member, Gangmaster Licensing Authority
- Dr Mick Upton, Centre for Crowd Management, Buckinghamshire Chilterns University College

The conference, which was held over two and a half days covered a wide range of licensing topics ranging from the Animal Welfare Bill to Practical Street Trading Enforcement and gave both officers and Members the opportunity to listen to and discuss issues with licensing experts, government officials and officers and Members from other local authorities.

The conference also coincided with the anniversary of the implementation of The Licensing Act 2003 and licensing authorities were praised at the conference for their work in implementing the Act by Richard Caborn MP, Minister of State; Feargal Sharkey, chair of the Live Music Forum, and Stuart Roberts of the Department for Culture, Media and Sport. According to official figures, around three per cent more venues were now putting on live music than under the old public entertainment licence regime and a quarter were now providing music facilities for the first time. Seventy per cent of venues that used to benefit from the 'two in a bar rule' – that limited them to only two musicians in one session – now have live music licences that were not so restricted. Fewer than two per cent of venues had their applications refused.

Feargal Sharkey, said: 'This picture was encouraging and confirmed much of the evidence that the forum had uncovered. We know that the majority of venues – large and small – can now put on live music and that's fantastic news.'

One point worthy of note from the conference was the comments made by Richard Caborn, Minister of State, in recognising the important role licensing now plays in local authority functions and the work of The Institute of licensing when he said: 'I pay tribute to the work the IOL is doing to strengthen the partnerships between licensing authorities, industry and government, including DCMS. We value that partnership and the dialogue we have with you on a range of issues. It is really important that we have your views and inputs to help us get it right. We also salute the important initiatives to raise the standing of licensing authorities within communities as well as the industries they regulate.'

A copy of the conference programme and book of presentations made at the conference had been placed in the Members library.

On a lighter note delegates at the conference gave generously during the formal dinner to assist with the BBC's Children in Need appeal when donations during the evening reached £301.

RESOLVED that the report be noted.

**993 Exclusion of the Public**

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

**994 Application For Private Hire Drivers Licence - Mr SP**

Consideration was given to a report which detailed an application for a licence to drive private hire vehicles from an applicant who has previously been disqualified from driving for a drink driving offence.

The application had been received from S.P for a licence to drive private hire vehicles. A copy of this application was attached to the report.

S.P had been a licensed driver in the past but in April 2005, following a conviction for drink driving for which he received a fine of £250 and nine months disqualification, he voluntarily surrendered his licence and did not renew it.

In August 2006 S.P wrote a mitigating letter to the Licensing Office seeking the return of his licence and confirming that he had completed a Drink Driving Course. A copy of this letter was attached to the report. Advice was given to him at that time when he was referred to the Council's guidelines on the relevance of convictions and advised that any application that he submitted would be referred to this committee for determination. A copy of that letter was attached to the report.

A copy of S.P's driving licence was attached to the report.

A criminal record check had been carried out on S.P and this confirmed that his sentence for his drink driving offence, initially 12 months disqualification, would be reduced to 9 months subject to him completing an alcohol rehabilitation course before 14/11/05. The disclosure also revealed previous convictions for theft, forgery and assault with intent to rob that occurred between 1975 and 1984. A copy of this disclosure was available at the meeting.

Members were reminded that under the provisions of Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Authority was instructed not to grant a licence to drive private hire vehicles unless they are satisfied that the applicant is a fit and proper person to hold such a licence.

A copy of the adopted guidelines with respect to the relevance of convictions was attached to the report for Members information.

Member were also advised that if they consider S.P to be a fit and proper person at this time he would then have to pass the DSA Taxi Driving Test, the Council's Private Hire Knowledge test and submit a medical report before his licence is granted.

S.P was in attendance at the meeting and was given the opportunity to outline his case.

Members came to a decision after consideration of the report, the comments made at the meeting by S.P in respect of his mitigating circumstances and the Councils adopted guidelines with respect to the relevance of convictions.

The Committee considered that the issues that S.P raised regarding the continued viability of his business and the related staffing issues were not relevant considerations to be taken into account when determining S.P's fitness to hold a private hire drivers licence.

Whilst S.P was free to make a further application at any time Members advised that they would expect S.P to demonstrate a period of at least three years free from conviction from the date of restoration of his driving licence before such an application would be considered.

RESOLVED that S.P's application for the grant of a private hire driver's licence be refused on the grounds that he was considered not to be a fit and proper person because of his conviction for drink driving which resulted in a nine month period of disqualification.

(Councillor Mrs Nelson declared a personal and prejudicial interest in respect of the above item and withdrew from the meeting)

(Councillor Johnson was in the Chair during consideration of the above item)

## **995 Private Hire Driver - KWR**

Consideration was given to a report on a private hire driver who had nine penalty points on her DVLA driving licence and who had declined the offer of attending the Driver Improvement Scheme as her work commitments preclude the time required to attend the scheme.

K W R at the time of this meeting was a licensed private hire driver. She had held a licence since May 2003 and her current licence was due to expire on 31st May 2007.

On her renewal application in June this year K.W.R declared two motoring convictions for which she had received three points each, making a total of nine points on her licence. These convictions were on 2nd August 2005 for speeding and 31st January 2006 for a contravention of Pedestrian Crossing Regulations. K.W.R had failed to notify the council of these convictions at the time she received them in contravention of the conditions subject to which her

licence had been granted.

A copy of K.W.R's driving licence was attached to the report for Members information and a copy of the DVLA guide to Endorsement Offence Codes was attached to the report.

On 18th October 2006 a letter was sent to K.W.R noting that she had nine points on her licence and offering her the opportunity to either appear before the Licensing Committee or attend the Driver Improvement Scheme. A copy of this letter was attached to the report.

A letter of reply had been received from K.W.R disputing that the last offence, a PC30, makes her a worse driver, and declining the offer to attend the Driver Improvement Scheme as her current business commitments as owner and managing director of two companies precludes the time required to attend the scheme. A copy of this letter was attached to the report.

Members were advised that when K.W.R's Private Hire drivers licence was granted in 2003 she was given a written warning regarding her standard of driving as she had four penalty points for speeding at that time. She was also informed that any further motoring convictions must be reported to the Council within seven days of conviction and that they could result in her fitness to hold such a licence being re-assessed by the Licensing Committee. A copy of that letter was attached to the report.

A copy of the Council's Guidance relating to the relevance of convictions was attached to the report for Members information.

Members were reminded that under the provisions of Section 61 (1)(a) of The Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of a private hire driver on the following grounds:-

That he has since the grant of the licence:-

- (i) been convicted for any offence involving dishonesty, indecency or violence; or
- (ii) been convicted of an offence under or fails to comply with the provision of the Act of 1847 or of this part of this Act; or
- (iii) any other reasonable cause.

K.W.R was in attendance at the meeting and was given the opportunity to outline her case.

After consideration of the report and to the comments made by K.W.R, the Committee decided to issue K.W.R with a final written warning as to her future conduct.

Members expressed their concern both in relation to K.W.R's convictions and to the fact that K.W.R failed to declare them to the Council in contravention of the conditions subject to which her licence was granted and despite being given a



previous written warning.

Should K.W.R therefore receive any further convictions or fail to comply with the conditions of her licence then her continued fitness to hold a private hire drivers licence would be reconsidered by the Committee and the warning would be revisited.

RESOLVED that K.W.R receive a final written warning as to her future conduct.

## **996 Private Hire Driver - MH**

Consideration was given to a report on a Private Hire driver who had been convicted of an offence. namely, Assault Occasioning Actual Bodily Harm, Cont to Sec 47 Offences Against the Person Act 1861.

On 6th September 2006 information was received from Cleveland Police (DC Ellis) that a serious assault had taken place on the 3rd September involving a number of taxi drivers from Royal Cars. This resulted in the Victim being admitted to hospital with a collapsed lung.

A positive identification took place that resulted in M.H being charged with an offence of Assault Occasioning Actual Harm Cont to Sec 47 Offences Against the Person Act 1861.

M.H. had been licensed as a Private Hire driver since 22 April 2003, his current licence was due to expire on 30 April 2007.

On 15th January 2007 Mr M.H. attended the office in person and handed a written notice of conviction. He was sentenced on the 12th January 2007 to 12 Months Imprisonment Suspended, and 200 Hours of Community Service plus costs.

At the time of the notification M.H. explained that there had been a dispute over the fare and that he feared for his life. He called for assistance from his office and a number of other people turned up. He stated he was not aware of what was going to happen.

A copy of the Councils Guidelines to Relevance of Convictions was attached to the report for Members information.

M.H. was the only person to be convicted relating to the incident.

Members were reminded that under the provisions of Section 61 (1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of a hackney carriage and/or private hire driver on the following grounds:-

That he had since the grant of the Licence:-

a. been convicted of an offence involving dishonesty, indecency or violence; or

b. been convicted of an offence under or fails to comply the provisions of the Act of 1847 or of this part of this Act;

c. any other reasonable cause.

M.H. and his representative M.H were in attendance at the meeting and were given the opportunity to outline their case.

The Committee noted that an offence of violence was one specifically identified under Section 61(1)(a)(i) of the Local Government (Miscellaneous Provisions) Act 1976 as ground for revoking M.H's licence. Furthermore under the Councils guidelines on the relevance of convictions an applicant with such a conviction would normally be expected to show three years after such a conviction before they would be deemed fit and proper to hold a licence. The Committee deemed that M.H. was not a fit and proper person to hold such a licence.

It was noted that M.H. was the only person that was charged in relation to the incident and that he pleaded guilty to that charge before Teesside Crown Court.

RESOLVED that M.H's Private Hire Driver Licence be revoked as he was deemed not to be a fit and proper person because M.H. had been convicted of the offence of Assault Occasioning Actual Bodily Harm.

**997 Combined Driver - SA**

S.A was in attendance at the meeting and presented Members with a letter from his solicitor requesting that the item be deferred as unfortunately due to a family matter he could not be in attendance at this meeting.

Members agreed that this item be deferred but that it would be heard at the next meeting of the Committee.

RESOLVED that the item be deferred.