

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 9th December, 2008.

Present: Cllr Bill Woodhead (Chairman), Cllr Dick Cains, Cllr Paul Kirton, Cllr Miss Tina Large, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Ann McCoy, Cllr Mrs Kath Nelson, Cllr Maurice Perry, Cllr Roy Rix, Cllr Fred Salt, Cllr Steve Walmsley

Officers: S. Mills, D. Kitching (DNS), J. Nertney, C. Ludd, M. Jones (LD)

Also in attendance: Licensing Trade members for item 4, Mr DR for item 6, Mr RT and Mr AF for item 7.

Apologies: Cllr Mrs Eileen Craggs, Cllr Ken Dixon

L Declarations of Interest

65/08

There were no interests declared.

L Minutes of the meetings held on 13th October 2008, 20th October 2008 and 66/08 4th November 2008

The minutes of the meeting held on 13th October 2008, 20th October 2008, and 4th November 2008 were signed by the Chairman as a correct record.

L Hackney Carriage and Private Hire Vehicle Policy

67/08

Consideration was given to a report that sought ratification of a decision taken by the Head of Community Protection in consultation with the Chairman and Vice Chairman to allow applications for replacement hackney carriage vehicle licences to be processed and for Members to consider amending their previous decision that applications for replacement hackney carriage vehicles be deferred.

The report also sought to approve a request from the trade to remove the proposed policy change requiring new and/or replacement private hire vehicles be fitted with a swivel seat arrangement.

At the Licensing Committee meeting held on 20 October 2008, Members agreed to defer applications for both new and/or replacement hackney carriage and private hire vehicles pending the ratification of the new policy. Since that decision issues had arisen with a small number of existing licensed vehicles where they had either been 'written off' following an accident or had not been able to be repaired because of the unavailability of spares. As this had caused unnecessary hardship and was not the intention of deferring application for new licences the Head of Community Protection, following representation from vehicle proprietors and Members, in consultation with Chairman and Vice Chairman had approved applications for replacement vehicles under the existing policies and specifications. To date this had involved 5 vehicles.

As it was not expected to report back in full to this Committee with the results of the ongoing consultation on the proposed policy until January, Members were requested to consider varying the previous decision at Minute 52/08 to allow application for the replacement of an existing licensed hackney carriage and/or private hire vehicle to be determined on their merits by the Head of Community

Protection in consultation with Chairman and Vice Chairman.

At the Licensing Committee meeting held on 13 October 2008 Members proposed revisions to the policy in respect of hackney carriage and private hire vehicle licensing (Minute 50/08 refers) which was under consultation with the trade and which would be subject to a further report as detailed above.

Preliminary discussions had been held with representatives of the trade when the issue of the proposed specification for all new and/or replacement private hire vehicles were discussed. Whilst there was some support for the requirement for new vehicles to meet the suggested emission standards the requirement for the provision of a swivel seat arrangement was not supported and they requested that Members reconsider this requirement, with a view to either removing it from the specification now or deferring this part of the requirement pending the full ratification of the final policy. This would allow private hire operators to licence new vehicles at what was considered to be their busiest trading period without having to go to the expense of adapting the vehicles, which may then not be required when the final policy was agreed. An example was given of one operator who had three applications, which meet the relevant emission standard, currently deferred and had indicated that he would want to licence up to ten new vehicles before the Christmas holidays.

The trade had also challenged the legality of this requirement because under the provisions of The Disability Discrimination Act 1995 (the DDA) the duty imposed to make reasonable adjustments in respect of their services and to overcome a physical feature by removing it, altering it, avoiding it or providing services by alternative means did not apply in relation to the provision or use of a vehicle.

Whilst the council could attach conditions to vehicle licences as they may consider reasonably necessary under the Provisions of The Local Government (Miscellaneous Provisions Act) 1976 it was a matter of interpretation as to whether the requirement to install a swivel seat or base was a physical feature of the vehicle and as such would conflict with what the DDA stated. The DDA also placed a legal duty on service providers to provide an auxiliary aid or service if it would enable (or make it easier for) disabled people to make use of those services. The legislation did not define physical feature or auxiliary aid but did state that the following were not to be treated as auxiliary aids or services, namely devices, structures or equipment the installation of which would necessitate making a permanent alteration to or which would have a permanent effect on either the internal or external physical fabric of the vehicle. A swivel seat mechanism could be deemed to be a temporary installation as the original seat could be reinstated.

The question of need had also been raised on two points. First, the current seats in hackney carriages were rarely used. Members were reminded that this claim was supported by the statistical evidence produced following consultation with the disabled community, which showed only 4% of respondents had made use of them (Minute 50/08 refers). Second, most if not all private hire operators also licensed hackney carriages, which were either fitted with swivel seats or were fully wheelchair accessible and some had licensed wheelchair accessible private hire vehicles.

After taking into consideration the report, concern was raised that vehicles would not be available during the busy Christmas period, which would effect both public safety in travelling across the borough, and the livelihood of drivers. Therefore members agreed to allow applications for replacement hackney carriage vehicle licences to be processed. Members considered the request regarding swivel seats and it was also noted that the aim of the policy was to raise the standard of the fleet of cars. However, due to the same concern regarding the availability of vehicles during the Christmas period, members agreed to defer the requirement relating to the provision of a swivel seat arrangement in private hire vehicles until the final policy was adopted.

RESOLVED that:-

1. the decision taken by the Head of Community Protection in consultation with the Chairman and Vice Chairman to grant applications for replacement hackney carriage vehicle licences be ratified.
2. the decision to Minute 52/08 shall be varied to allow applications for replacement of existing hackney carriage and private hire vehicles will be determined on their individual merits by the Head Of Community Protection in consultation with the Chairman and Vice Chairman.
3. the proposed policy change requiring new and/or replacement private hire vehicles to be fitted with a swivel seat arrangement be deferred until the consultation process on the proposed policy has been completed when the outcome of the consultation will be reported to a future meeting of the licensing committee which will give their views on the final policy.

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68/08** **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.

**L
69/08** **Combined Driver - DR**

Consideration was given to a report on the continued fitness of a licensed combined Hackney Carriage and Private Hire Driver who was issued with a final written warning by this Committee and subject to him being reassessed after a six month period.

Mr DR was a combined Hackney Carriage and Private Hire Driver and had been licensed with the Authority since December 1990. His current licence was due to expire on 31 May 2009.

In January 2008, notification was received in the form of a CRB Disclosure that Mr DR had received a Police Caution on the 25th January 2006 for Battery. Mr DR appeared before Licensing Committee on 20 May 2008. At that hearing, Members resolved to issue him with a severe final warning as to his future conduct. The Committee also required Mr DR be brought back before them after

six months for his licence to be reviewed. A copy of minute 47/07, was tabled for members information.

Members were advised that according to Council records there had been no more incidents or complaints regarding Mr DR since the last Committee Hearing.

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 any of the following grounds: -

(a) that he has since the grant of the Licence: -

(i) been convicted of an offence involving dishonesty, indecency or Violence; or

(ii) been convicted of an offence under or fails to comply the provisions of the Act of 1847 or of this part of this Act; or

(b) any other reasonable cause.

Members are also advised of the revisions to Section 61 introduced under the Road Safety Act 2006 as follows:

(2a) Subject to subsection (2b) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which the notice is given to the driver under subsection (2)(a) of this section

(2b) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

Mr DR was in attendance and given the opportunity to state his case.

Members had full regard to the report presented, a copy of which Mr DR had received prior to the meeting. After consideration of the report Members noted that a dim view was taken on Drivers involved in domestic violence incidents, however accepted that Mr DR had been of good character during his probation period and therefore considered a fit and proper person to hold a licence.

RESOLVED that Mr DR be considered a fit and proper person to hold a Combined Driver Licence.

**L
70/08**

Private Hire Driver - RT

Mr RT was in attendance with his representative Mr AF. Mr AF stated that he believed there was a discrepancy with the transcript presented as evidence to the committee and he wished to question the Car Park Attendant involved regarding this. Officers noted that the Car Parking Attendant had indicated that they would be attending the meeting but had not arrived. Members therefore

believed it to be reasonable and fair that consideration of the report be deferred to the next meeting.

Mr AF informed that Mr RT's licence expired at midnight on 9th December 2008, and requested that his licence be extended to the date of the next meeting.

RESOLVED that: -

1. the item be deferred.
2. Mr RT licence be extended to the date of the next meeting.