

LICENSING COMMITTEE

24 July 2012

Present:

Councillor Moira Macdonald (Chair)

Councillors Owen, Choules, Clark, Dawson, D J Henson, Leadbetter, Payne, Pearson, Robson, Ruffle, Shiel, Tippins and Winterbottom

Also present:

Corporate Manager - Legal, Licensing Solicitor, Principal Licensing Officer and Member Services Officer (SJS)

34 **Minutes**

The minutes of the meeting held on 12 June 2012 were taken as read and signed by the Chair as a correct record.

35 **Declarations of Interest**

No declarations of interest were made by Members.

36 **Review of Gambling Policy : Draft Policy to be used as Consultation Document**

The Corporate Manager Legal Services presented the report on the Gambling Act 2005 which introduced significant changes to the Licensing Law in England and Wales. The report referred to one of the main provisions of the Act, the Gambling Policy Statement and the requirement to review it. The purpose of the report was to inform Members of the document that was being used as a consultation document to fulfil the obligation for a three yearly review.

RESOLVED that the draft policy document be circulated and consulted upon as required with any responses being brought to the November meeting of this Committee for consideration prior to the adoption of the policy.

(Report circulated)

37 **Law Commission - Proposals for Change to Taxi and Private Hire Licensing**

Members noted that this item would be deferred to a future meeting of the Licensing Committee.

38 **Sex Entertainment Venues and Sex Establishments**

The Licensing Solicitor presented the report proposing the adoption of the amendments made to Schedule 3 Local Government (Miscellaneous Provisions) Act 1982 ("the 1982 Act") by section 27 Policing and Crime Act 2009 ("the 2009 Act") to allow the regulation of lap dancing and other sexual entertainment venues. The report also proposed the adoption of a policy in respect of the regulation of sex establishments, including sexual entertainment venues.

Members were advised that these powers were not mandatory and would only apply where adopted by local authorities. Where adopted, these provisions would allow local authorities to refuse an application on potentially wider grounds than was permitted under the Licensing Act 2003 and would give local people a greater say over the regulation of lap dancing clubs and similar venues in their area. The draft policy reflected the current position and it was proposed that the policy remained as the status quo. The proposed pool of conditions would give the Council tighter control over such establishments.

A Member circulated information regarding the issue of an equality impact assessment (EIA); proposed amendments/additions to the reasons for refusing application in the cumulative impact zone (CIZ) and the administrative area where the number of sex establishments shall be nil; and proposed amendments and additions to the conditions for the protection for workers against their being exploited, these being suggested by Philip Kolvin, QC. She stated that it was important to ensure that the policy was robust to protect against any challenge and that workers were protected.

The Licensing Solicitor advised that the Principal Licensing Officer had undertaken an EIA; the number of establishments defined in the policy and statutory legislation set out in paragraph 12 schedule 3 of the Local Government (Miscellaneous Provisions Act) 1998 parts (c) and (d) which make reference to the character and nature of a locality would offer the Council grounds to refuse an application and any challenge to that decision. To add reasons to the nil limit for the administrative area could potentially open up the Council to challenge. The suggested amendments and additions to the pool of conditions could be included in the policy although with the proviso of 'as far as they were enforceable' included. The area in which the limit of one sex establishment policy applied was based on the CIZ under the Licensing Act 2003 and this in turn was based on the night time economy at this present time. The area in which the nil policy applied could be changed to reflect any developments.

The Corporate Manager Legal Services advised that a report on EIA could be brought back to this Committee at a later stage and this would not prevent the policy from being adopted. The more detailed reasons the Council sets out for refusing an application the more likely that any refusal could be opened to be challenged.

RESOLVED that Schedule 3 of 1982 Act as amended come into force on 3 September 2012 and the Sex Establishment Policy as amended be adopted as set out in the report with amendments and additions to the pool of conditions (as far as they are enforceable) as circulated at the meeting.

(Report circulated)

39 Minor amendments to the Constitution to delegate functions under the Licensing Act 2003

The Licensing Solicitor presented the report on proposed changes to ensure as the Licensing Authority, the recent amendments to the Licensing Act 2003 the functions of the Council, were delegated to the appropriate level and addressed in the Constitution.

In response to Members, the Licensing Solicitor stated that there was a statutory process for the submission Late Temporary Event Notices which included a statutory time period. There was no discretion to be exercised in the service of a counter

notice where there was an objection to a Late Temporary Event Notice and so the delegation was at officer level.

The Corporate Manager Legal Services advised that there was no right of appeal in the legislation to a Temporary Events Notice. Should councillors or residents wish to complain about any aspect of the process for an individual application they would need to take the matter up with the Assistant Director.

RECOMMENDED that the Council adopts the changes to the Constitution to reflect the minor new delegations and minor amendments to the existing delegations to the Licensing Sub Committee and the Assistant Director Environment.

(Report circulated)

40 **Local Government (Access to Information) Act 1985 - Exclusion of Press and Public**

RESOLVED that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of the following items on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part I, Schedule 12A of the Act.

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

41 **Application for Consent to Trade (Mr M.R.)**

The Principal Licensing Officer reported that Mr MR had applied for consent to street trade for a period of twelve months in Castle Street, a designated area under the provisions of the Local Government (Miscellaneous Provisions) Act 1982. He had not previously held consent to trade in any part of the City. An application for consent for a stall had been refused at the meeting of this Committee on 12 June 2012 as Members had been concerned at the lack of space and because Mr MR had been unable to advise precisely of the size of his stall.

Officers circulated photograph's of possible options for the siting of the stall.

Mr MR attended the meeting and spoke in support of his application for this fast food business. He circulated photograph's showing two possible locations for the siting of the stall one close to the wall on the right hand side (looking up Castle Street) of Castle Street and another on the top left (looking up Castle Street) of Castle Street near to the cash point. He stated that either of these options would still give people space to move around Castle Street freely. He was offering good healthy food and the stall would attract more people to the area.

In response to Members' questions, Mr MR clarified the positions that he had identified and that the vehicle he was planning to purchase would be manoeuvrable; would leave enough space for access to the cycle racks; anticipated that the stall would be the same size as the creperie stall, although was prepared to build his own stall to fit a space; there would be enough space for access to Musgrave Road should the stall be placed in the top left of Castle Street; he had measured the area and was of the view that that was enough room for his stall.

Members noted that the Christmas market was dealt with via the City Centre Management Office and that the current stalls position were moved slightly to accommodate the market.

The Licensing Solicitor outlined to Members the potential challenges that could arise should Members decide to visit the site and the difficulty of ensuring fairness in the present circumstances.

The Licensing Committee retired to make its decision.

RESOLVED that the Licensing Committee had concerns regarding the congestion the stall could cause and the lack of space there would be for people to circulate so the application for consent be refused.

(Report circulated to Members)

TOWN POLICE CLAUSES ACT 1847/TRANSPORT ACT 1985, SECTION 16

42 Application for the Issue of a Hackney Carriage Vehicle Licence (Mr S.H.)

The Licensing Solicitor reported that Mr SH had applied for a hackney carriage licence. Mr SH had indicated that, if successful, he would put a London type cab (TX4 Elegance) onto the circuit.

Mr SH had emailed stating that he would be unable to attend the meeting but inviting the Licensing Committee to make its decision based upon his previous applications.

The Licensing Solicitor advised that in light of Mr SH advising that wished the decision to be made in his absence and the indication that he had nothing further to add to this application then the decision could be made in absence. It was not possible to consider evidence put forward in previous applications as these had been determined and refused.

RESOLVED that it be determined that Mr SH's application be refused. The Licensing Committee was satisfied with the conclusion of the Mouchel Ltd. survey (published in September 2010) together with a top-up survey published in March 2011 that there was no significant unmet demand for hackney carriages in Exeter. Mr SH had produced no evidence that cast doubt on the survey findings or persuaded the Licensing Committee that there was significant unmet demand. The Licensing Committee found no reasons that justified a departure from the policy of not exercising its discretion to grant further hackney carriage licenses.

(Report circulated to Members)

43 Application for the issue of a Hackney Carriage Vehicle Licence (Mr S.R.)

The Principal Licensing Officer reported that Mr SR had applied for a hackney carriage licence. Mr SR had indicated that, if successful, he would put a Ford Journey onto the circuit which would be a wheelchair accessible vehicle. Mr SR had undertaken a survey of 28 people these surveys were attached to the Committee papers.

Mr SR attended the meeting and spoke in support of his application. He stated that Exeter was now getting very busy and on a Friday and Saturday night there were long queues of people waiting for a taxi. His survey and photograph's were evidence of this.

In response to Members' questions, he stated that he worked at night and that generally most of his customers said they had to wait to get a taxi. There was a problem late at night/early morning as the buses and trains stopped at midnight

therefore people needed to use a taxi to get home. The survey was given to all his customers.

The Licensing Solicitor clarified the position with regards to the evidence gathering that would have been undertaken for the Mouchel Ltd. survey (published in September 2010) and the top-up survey published in March 2011.

The Licensing Committee retired to make its decision.

RESOLVED that it be determined that Mr SR's application be refused. The Licensing Committee was satisfied with the conclusion of the Mouchel Ltd. survey (published in September 2010) together with a top-up survey published in March 2011 that there was no significant unmet demand for hackney carriages in Exeter. Mr SR had produced no evidence that cast doubt on the survey findings or persuaded the Licensing Committee that there was significant unmet demand. The Licensing Committee found no reasons that justified a departure from the policy of not exercising its discretion to grant further hackney carriage licenses.

(Report circulated to Members)

44 **Application for the issue of a Hackney Carriage Vehicle Licence (Mr S.B.)**

The Licensing Solicitor reported that Mr SB had applied for a hackney carriage licence. He had indicated that, if successful, he would put a London type cab (TX4 Elegance) onto the circuit.

Mr SB attended the meeting and spoke in support of his application.

He stated that, overall there had been a reduction in the number of taxi seats in the City. This was partly resulting from some operators converting to smaller vehicles and that were not enough seven seater vehicles in the city. He had recently been assaulted and the TX4 Elegance was a safer vehicle.

In response to Members', Mr SB clarified that the TX4 Elegance had glass between the driver and passengers which offered protection from assault; at present he was renting a hackney carriage and driving the night shift. He had tried to find a safer vehicle to rent but had not been able to.

Mr SB stated that when he had been assaulted he had been hit and slapped on the back of his head from behind. He had not been hospitalised, suffered no permanent injury and had carried on driving. He advised of the details of the assault and that the Police had witnessed the incident and arrested the woman in question. The incident had happened when he had taken a woman from St David's Station to The Royal Oak in Heavitree, she had then refused to pay the fair and would not get out of the taxi. He had then driven her to the Police station and eventually stop near a Police van in Gladstone Road where he explained to the Police Officers what had happened and who also witness the woman attacking him.

The Licensing Solicitor advised that in the last two years the Committee had been aware of two serious assaults on taxi drivers but that the Council was not aware of a serious problem of assault on drivers in the city.

The Licensing Committee retired to make its decision.

RESOLVED that it be determined that Mr SB's application be refused. The Licensing Committee was satisfied with the conclusion of the Mouchel Ltd. survey (published in September 2010) together with a top-up survey published in March 2011 that there was no significant unmet demand for hackney carriages in Exeter. Mr SB had produced no evidence that cast doubt on the survey findings or persuaded the Licensing Committee that there was significant unmet demand. The Licensing Committee found no reasons that justified a departure from the policy of not exercising its discretion to grant further hackney carriage licenses.

(Report circulated to Members)

The meeting commenced at 5.30 pm and closed at 8.40 pm

Chair