

LICENSING COMMITTEE

17 November 2009

Present:

Councillor Ben Noble (Chair)

Councillors Branston, S Brock, Cole, Mrs Danks, Gale, R Smith, Sterry, Thompson and Wadham

Head of Environmental Health Services, Principal Licensing Officer, Licensing Solicitor and Member Services Officer (HB)

30 **Minutes**

The minutes of the meetings held on 28 July and 22 September 2009 were taken as read and signed by the Chair as a correct record.

31 **Declarations of Interest**

No declarations of interest were made by Members.

32 **Hackney Carriage Licence Appeal - Mr Paul Sandle**

The Licensing Solicitor presented the report on the outcome and implications of a successful appeal by Nick Sandle (on behalf of Paul Sandle) at Exeter Crown Court against the Licensing Authority's refusal to "renew" Mr Sandle's lapsed Hackney Carriage licence and subsequent refusal to grant Mr Sandle's application for a new Hackney Carriage licence.

Given the uncertain position in which the decision had left the Licensing Authority, the Licensing Solicitor advised that the Head of Legal Services had, in agreement with the Head of Environmental Health Services, instigated an appeal by way of case stated to the High Court. The Licensing Solicitor detailed the background to the Learned Judge's decision explaining that an appeal was necessary in order to clarify what had appeared to be a simple point of law, that is, the precise expiry date of a one year Hackney Carriage licence and the ability, or otherwise, of the authority to "renew" a licence after that period.

In response to a Member, the Licensing Solicitor advised that the decision to grant a Hackney Carriage licence to Mr Sandle did not impact directly on the existing policy of not exercising the discretion to increase the number of licences issued above 59, being the current level of significant unmet demand, although the total number of licenses was now 60 as a result of the decision.

RESOLVED that the position be noted.

(Report circulated)

LICENSING ACT 2003

33 **Licensing Act 2003 - Minor Variations to Premises Licence**

The Principal Licensing Officer presented the report setting out details of the applications received to date regarding minor variations under the provisions of legislation that had come into effect on 28 July 2009. The legislation provided that these applications should be dealt with by the Licensing Authority at officer level. This matter had been the subject of a report on 28 July 2009, the Licensing Committee adopting the recommendations in the report at that time with a caveat that details of any applications should be brought to their attention.

RESOLVED that the report be noted.

(Report circulated)

34 **Review of the Licensing Act Policy Relating to the Introduction of a Cumulative Impact Zone : Results of Consultation**

The Head of Environmental Health Services presented the report setting out the results of the consultation under the Licensing Act 2003 in respect of the variation of the adopted Licensing Act Policy of the City Council. The variation had arisen following a request from the Devon and Cornwall Constabulary to introduce a Cumulative Impact Zone (CIZ) in the Fore Street and Sidwell Street areas of the City.

RECOMMENDED that the recommendation of the Head of Environmental Health Services be supported and Council be requested to adopt the Licensing Policy containing the elements relating to the CIZ as set out in the report.

(Report circulated)

GAMBLING ACT 2005

35 **Review of the Gambling Act Policy : Results of Consultation**

The Principal Licensing Officer reported on the outcome of consultations under the Gambling Act 2005.

RECOMMENDED that the policy be adopted by Council for the next three years.

(Report circulated)

36 **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 involved the likely disclosure of exempt information as defined in Paragraph 1 of Part I, Schedule 12A of the Act.

TRANSPORT ACT 1985

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

37 Application for a Hackney Carriage Licence (Mr D.M.M.)

The Principal Licensing Officer reported that an application had been received from Mr M for a Hackney Carriage Vehicle Licence.

Mr M had included with his application signatures from 26 people who had pledged their support for him in obtaining a Hackney Carriage Plate for a wheelchair accessible vehicle and confirmed their current difficulties in obtaining the services of a Wheelchair Accessible Hackney Carriage.

Mr M attended the meeting and spoke in support of his application. He stated that he had driven taxis for four years and that he wished to increase this work by owning a plate. He possessed a long-wheel based Renault Traffic converted to enable the carriage of two wheelchair users simultaneously and be able to carry carers or friends at the same time. He asserted there were very few, if any, of this type of wheelchair accessible vehicles in the City. Mr M added that the vehicle was of a high standard and afforded the choice of rear loading or side loading of wheelchairs. He stated that many disabled users found difficulty in obtaining taxis as many were not equipped to carry wheelchairs and some of those that were so equipped were sometimes unable to offer a service because of broken equipment or other reasons although he had no evidence to support that allegation. Mr M also alleged that disabled persons maintained that they were often charged in excess of the normal rate. In many cases, they ordered a taxi service three or four days before the required journey to ensure that they were able to secure suitable transport. In response to that comment, the Principal Licensing Officer informed the Committee that the services referred to were in fact Private Hire Vehicle Companies who were not controlled by way of fees and charges set by the Licensing Committee in relation to Hackney Carriages.

In his application he had referred to the survey into unmet demand carried out following resolution in October 2007. The survey had concluded that there was no significant unmet demand after which this Committee had ratified the decision that there would be no change in the policy and that a limitation of 59 would remain. In his letter he maintained that the inherent problem with a street survey was that it only measured the patent demand. Mr M maintained that the demand for taxis from a proportion of the population, that is, the disabled, had been so poorly catered for in the past that they had given up using the Hackney taxi service. This is referred to as latent demand in the survey. Mr M referred to the 26 signatures and stated that this was, in his view, evidence that there was a significant unmet demand from the public, albeit that this was for a specialised vehicle and from a specific group within the population.

The Committee retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer only. The Licensing Committee assessed the evidence put before them and the claim that there was a significant unmet demand in the City.

Mr M and officers were requested to return to the meeting in order to provide clarification to Members on certain issues. Mr M confirmed that his vehicle was capable of accommodating two wheelchairs and five passengers at the same time. In response to a question from a Member, the Principal Licensing Officer advised that 24 of the 60 vehicles licensed as Hackney Carriages were wheelchair accessible,

some being side loading and others rear loading. The Principal Licensing Officer confirmed that, to his knowledge, there was only one existing Hackney Carriage capable of transporting two wheelchairs at one time.

The Committee again retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer only.

Members concluded that the specific nature of the vehicle for which a plate was being sought in comparison to other wheelchair accessible vehicles could justify a departure from policy allowing a plate to be granted in these circumstances.

RESOLVED that:

- (1) the evidence adduced by Mr M as to the demand for wheelchair accessible Hackney Carriages caused the Licensing Committee to question the level of significant unmet demand identified by the most recent survey. As a result, the Licensing Committee felt bound to commission a new survey into unmet demand forthwith; and
- (2) the Licensing Committee found the nature of Mr M's application exceptional in that the vehicle was capable of carrying two wheelchairs at one time and, as such, it justified an exception to the policy not to exercise discretion to grant a Hackney Carriage licence above the level of significant unmet demand identified and therefore granted a Hackney Carriage licence to Mr M.

(Report circulated to Members)

38 **Application for a Hackney Carriage Vehicle Licence (Mr K.M.J)**

The Principal Licensing Officer reported that an application had been received from Mr J for a Hackney Carriage Licence. Mr J was a joint owner with Ms T of Hackney Carriage Licence HO26. Mr J intended purchasing a TX4 Wheelchair Accessible vehicle which was a purpose built London type taxi.

Mr J attended the meeting and spoke in support of his application. He stated that he wished to offer a taxi service to old people's homes, hotels and customers wishing to return home from pubs late at night. In response to the Chair, he advised that the vehicle he had identified with the manufacturers would be able to accommodate a wheelchair and four passengers. He confirmed that his name was on an existing plate and Members noted that the current policy did not normally permit an individual to hold a licence for more than one plate

The Committee retired to make its decision in the presence of the Licensing Solicitor and the Member Services Officer only.

RESOLVED that the application for a Hackney Carriage Vehicle licence be refused as the applicant is already the joint owner of a Hackney Carriage licence and grant of a further licence would be contrary to current policy.

(Report circulated to Members)

The meeting commenced at 5.30 pm and closed at 7.50 pm

Chair