

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Licensing Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Thursday, 18 October 2018 commencing at
2:30 pm**

Present:

Chair
Vice Chair

Councillor R E Garnham
Councillor J Greening

and Councillors:

K J Berry, G F Blackwell, J E Day, A J Evans, R Furolo, P A Godwin, A Hollaway, A S Reece,
M J Williams and P N Workman

LIC.9 ANNOUNCEMENTS

9.1 The evacuation procedure, as noted on the Agenda, was taken as read.

LIC.10 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

10.1 Apologies for absence were received from Councillors G J Bocking, R M Hatton and H A E Turbyfield. There were no substitutions for the meeting.

LIC.11 DECLARATIONS OF INTEREST

11.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.

11.2 There were no declarations made on this occasion.

LIC.12 MINUTES

12.1 The Minutes of the Licensing Committee meeting held on 14 June 2018 and the Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005) meeting held on 19 June 2018, copies of which had been circulated, were approved as correct records and signed by the Chair.

12.2 The Chair wished to record his thanks to Members and officers for their excellent work around the Witcombe Cider Festival and he indicated that he had received a number of reports that the festival had been run in an exemplary way.

LIC.13 REVIEW OF HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE POLICY

13.1 The report of the Environmental Health Manager, circulated at Pages No. 21-64, asked Members to agree to establish a Working Group to review the Hackney Carriage (Taxi) and Private Hire Policy, and to name five Members to serve on the Working Group; and to approve the Terms of Reference for the Working Group, as set out at Appendix 1 to the report.

- 13.2 The Environmental Health Manager explained that, at the Licensing Committee meeting on 14 June 2018, Members were advised that Cheltenham Borough and Gloucester City Councils had raised concerns about the disparities between Tewkesbury Borough Council's Hackney Carriage (Taxi) and Private Hire Driver Policy and their own policies. This was causing problems as a large number of the taxis licensed in Tewkesbury Borough operated predominantly in Cheltenham and Gloucester. Since that time, two meetings had been held with officers from Gloucester City and Cheltenham Borough Councils to go through the policies and identify the discrepancies which included: age of vehicles, age of driver, length of time the driver had held a UK/EU driving licence, requirement to take a knowledge test, driving assessment requirements and MOT requirements. He indicated that there was an error in the report at Page No. 22, Paragraph 2.2 which stated that the Working Group would comprise three Members and clarified that this should be five Members - the Lead Member for Clean and Green Environment would also be invited to attend the Working Group meetings.
- 13.3 During the debate which ensued, a Member questioned why Tewkesbury Borough Council's policy was the one which needed to be aligned with the other authorities' policies rather than the other way around. In response, the Environmental Health Manager explained that the Working Group would have an opportunity to look at the differences between the policies and consider the reasons for making changes, for example, there were issues with licensing older vehicles in terms of safety and emissions etc; assurance was provided that it was not intended to make changes for the sake of it. As part of the review, it was proposed to consult with the licensed trade to see how they might be impacted by potential changes, for instance, Gloucestershire County Council used several private hire vehicles for school transport.
- 13.4 A Member indicated that there was a perception that it was easier to obtain a licence from Tewkesbury Borough Council than some of the other authorities in the county so she welcomed the opportunity to review the policy. Another Member understood that Cheltenham Borough Council had recently approved plans to require all taxis to be wheelchair accessible which had caused a lot of unrest among licensed drivers; the Legal Adviser confirmed that this was being phased in over a period of time. The Environmental Health Manager advised that there were several retro-fitted vehicles operating in Tewkesbury Borough and there was a need to have a broader discussion about what this would mean for those vehicles. A Member pointed out that Tewkesbury Borough Council licensed a lot of disabled access vehicles which were used primarily for school contracts and were not available for the public to hire and she questioned whether it would be possible to look at the terms of operation for those vehicles to encourage wider use. She also drew attention to Page No. 49 of the report, Section 2 of the existing policy, which related to novelty vehicles, and raised concern that it was unclear which vehicles needed to be licensed; she felt it was important to give this some consideration in light of the recent accident in New York involving a stretch limousine which had resulted in the death of 20 people. The Chair indicated that there were a number of points which could be picked up by the Working Group so he felt the review would be worthwhile. In response to a query regarding timescales, the Head of Community Services clarified that it was intended to bring a revised policy back to the Licensing Committee meeting on 14 February 2019 and he was of the view that the Working Group would need to meet on three occasions prior to that.

13.5 It was subsequently

RESOLVED

1. That a Licensing Working Group be established to review the Hackney Carriage (Taxi) and Private Hire Policy comprising the following membership:

Councillors G F Blackwell, R Furolo, R E Garnham, A Hollaway and M J Williams. The Lead Member for Clean and Green Environment would also be invited to attend the meetings.

2. That the Terms of Reference for the Working Group be **APPROVED** as set out at Appendix 1 to the report.

LIC.14 REVIEW OF STREET TRADING POLICY

14.1 The report of the Environmental Health Manager, circulated at Pages No. 65-99, asked Members to approve, for public consultation, the draft revised Street Trading Policy, which included an amendment to require an enhanced Disclosure and Barring Service (DBS) check as a pre-requisite to obtaining a street trading licence, as set out at Appendix 3 to the report.

14.2 Members were advised that, at the Licensing Committee meeting on 14 June 2018, it was agreed that street traders should be consulted on the inclusion of an enhanced DBS check as a pre-requisite to obtaining a street trader's licence. On 11 September 2018, a letter was sent to the 17 licensed street traders within Tewkesbury Borough seeking their view on the proposed changes. One response had been received which was generally supportive but raised concern about street traders having to pay for the DBS check themselves and that the check was not necessary for all types of street traders so factors such as location should be taken into consideration in terms of the likelihood of them coming into contact with vulnerable children. The Environmental Health Officer indicated that, whilst it may be less likely that vulnerable children were able to visit street traders in areas that were difficult to access without a vehicle, vulnerable adults may still be able to access such areas and therefore the enhanced DBS checks should be applied to all street traders. On that basis, it was recommended that this amendment be included within the draft revised policy for public consultation.

14.3 Several Members reiterated the importance of recognising that adults could be vulnerable as well as children and that it was necessary to create a safeguarding environment where all vulnerable persons were protected. A Member drew attention to Page No. 77, Paragraph 3.3.1 of the draft revised policy, which stated that the Council would have regard to a number of factors in determining whether an applicant was a suitable person to carry out business as a street trader, and she questioned whether it was necessary to take account of 'failure to make use of a previous street trading consent'. In response, the Environmental Health Manager explained that this intended to prevent applications being made purely to block other traders from using a certain area.

14.4 It was agreed that a minor amendment should be made to Page No. 76, Paragraph 3.2.1 of the draft revised policy to read: 'Applicants applying for a new street trading consent ~~will be expected to obtain~~ **will require** an enhanced DBS certificate (formerly known as CRB) from the Disclosure and Barring Service, which must be no more than one calendar month old when submitted to the Council' and that Paragraph 3.2.2 should be amended to state that: 'The DBS certificate must be in the name and **home** address of the applicant as detailed on the application form' as the DBS was personal to the applicant and separate from any business. A Member noted that the draft revised policy had an implementation date of 1 March 2018 and she questioned whether the requirement to provide a DBS certificate would only apply to new applicants. In response, the Environmental Health Manager advised

that existing licence holders would be requested to provide the DBS certificate at the point of renewal; once the revised policy had been approved, officers would write to licenced traders to ensure they were aware of the changes.

- 14.5 A Member drew attention to Page No.77, Paragraph 3.3.2 of the draft revised policy which stated that 'Identification badges will be issued by the Council to demonstrate the suitability of the consent holder and any assistants who may be trading on their behalf. Other employees may not need to apply for DBS check and an identification badge as long as they are supervised at all times by a badge holder'. She gave an example of a scenario where someone owned two or three ice cream vans and held a street trading consent in their name but sent out an employee to sell ice cream on their own and she questioned whether the employee would need to undergo a DBS check in that situation. The Head of Community Services felt that this was a valid point and indicated that the policy would be reworded to ensure that any operatives working alone, who were likely to come into contact with vulnerable persons, would need to undergo a DBS check; it would not be reasonable to expect every employee to have a check, for example, employees carrying out food preparation who did not deal with customers directly.

- 14.6 With regard to the standard conditions, appended to the report at Annex D, a Member felt that the sixth bullet point on Page No. 95 'No television, radio, tape player or other device used for the entertainment of the operator, shall be audible outside, or beyond the trading unit' seemed to contradict the additional conditions applicable to mobile food vendors, set out at Page No. 96, which stated that 'Chimes should not be sounded [...] louder than 80db(A) at 7.5m'. In response, clarification was provided that the first condition intended to prevent situations such as where a radio was being played too loudly from a catering van parked in a layby whereas the decibel level was specific to loudspeakers, used for ice cream van chimes, and was prescribed in legislation.

- 14.7 It was

RESOLVED

That the draft revised Street Trading Policy, including the amendment to require an enhanced Disclosure and Barring Service (DBS) check as a pre-requisite to obtaining a street trading licence, as set out at Appendix 3 to the report, be **APPROVED** for public consultation, subject to the following amendments:

- Page No. 76, Paragraph 3.2.1 of the draft revised policy to be amended to read: 'Applicants applying for a new street trading consent ~~will be expected to obtain~~ **will require** an enhanced DBS certificate (formerly known as CRB) from the Disclosure and Barring Service, which must be no more than one calendar month old when submitted to the Council';
- Page No. 76, Paragraph 3.2.2 to be amended to read: 'The DBS certificate must be in the name and **home** address of the applicant as detailed on the application form'; and,
- Page No. 77, Paragraph 3.3.2 – 'Identification badges will be issued by the Council to demonstrate the suitability of the consent holder and any assistants who may be trading on their behalf. Other employees may not need to apply for DBS check and an identification badge as long as they are supervised at all times by a badge holder' - To be reworded to ensure that any operatives working alone, who were likely to come into contact with vulnerable persons, would need to undergo a DBS check.

LIC.15 LICENSING GENERAL UPDATE

- 15.1 Attention was drawn to the report of the Environmental Health Manager, circulated at Pages No. 100-102, which provided an update in respect of the significant changes to the Houses in Multiple Occupation regime and the implementation of the Animal Welfare Regulations 2018. Members were asked to consider the report.
- 15.2 The Environmental Health Manager advised that the new legislation had come into effect on 1 October 2018. With regard to Houses in Multiple Occupation (HMOs), there was now a requirement to licence properties that were two or more storeys with at least five tenants that formed more than one household. It was a requirement that any fees applied relating to the licensing regime adequately reflected the costs to the Council of processing an application and managing that application during the period of the licence. The previous countywide fee of £450 had been reviewed and would now be £870 for a five year licence; this had been worked out on a component basis taking into account the actual cost to the authority and was comparable with other local authorities in Gloucestershire. To date, Tewkesbury Borough Council had been contacted by seven landlords wishing to apply to have their properties licensed which, although significantly less than predicted, was in line with similar authorities. A strategy was being put in place to try to identify other HMOs that met the latest requirements. The strategy would involve writing to all properties where the address of the Council Tax payer differed from the property address; writing to all estate and letting agents; carrying out a further publicity campaign; and engaging other Council departments/services and strategic partners with a view to gaining intelligence. The onus would be on the owner to apply for a licence if they were affected by the legislation. A Member suggested that the Electoral Register could be used to identify HMOs and the Environmental Health Manager confirmed there was a specific exemption in the Housing Act which would allow that information to be used for this purpose and it might be possible to combine this with other sources of information, such as Council Tax, in order to identify properties to write to.
- 15.3 A Member sought clarification as to whether flats could be HMOs and was advised that they could be if they were single living units with five or more people from different households sharing facilities such as a bathroom or kitchen. A Member raised concern about the difficulties which could arise in terms of Council Tax payment if a landlord failed to register a property as a HMO and he indicated that he had a particular case in mind. In response, the Chair advised that Members could take any issues to officers at any time and he suggested this be taken up outside of the meeting so the Member could get a definitive answer from the officer in terms of his particular query.
- 15.4 A Member questioned what the sanction would be for failing to register an HMO and was advised that it was an offence so the Council would look to prosecute. The Environmental Health Manager indicated that there were usually several reasons for failing to come forward, for instance, the property may be in poor condition, e.g. no heating or hot water. In response to a query, Members were advised that the landlord would normally be called in for an interview under caution and the Council would make a decision on whether it was in the public interest to take them to Court.
- 15.5 As advised at the previous Licensing Committee meeting, the Animal Welfare Regulations 2018 had come into force on 1 October 2018 and statutory guidance had been issued at the beginning of September. The regulations had the potential to significantly impact upon inspections and how animal activities were assessed. A charging scheme was currently being worked up but the other local authorities in the county had put their schemes on hold pending further guidance which was due to be released. It would be necessary to go out across the borough to identify additional licensable activities; it was noted there were a number of dog boarding franchises within the borough and the legal issues around that would require some

clarification i.e. whether the franchise would need to be licensed or the actual location where boarding took place.

- 15.6 A Member queried whether the new legislation applied to dog and cat breeders and the Environmental Health Manager clarified that dog breeding in particular was one of the key drivers of the legislation. There was a need to clarify the criteria in this regard, for example, whether food, vaccinations etc. were taken into account in terms of any profits made by the breeder, and whether puppies were from a one-off litter. It was also necessary to establish how technology could be used to identify breeders, e.g. social media, but he provided assurance that once the definitions were clear, it would be widely publicised. The Member indicated that he was aware of a dog breeder being identified by Inland Revenue through the insurance he was paying for the dogs and veterinary bills etc. so this could be a potential way of identifying breeders. In addition, breeders tended to register dogs with Crufts or the Kennel Club so that could be used to check the number of puppies in a litter and how much they had been sold for. Another Member suggested that the legislation could be publicised by distributing leaflets in known dog walking areas. A Member questioned whether dog walkers would need to be licensed and the Environmental Health Manager indicated that consideration needed to be given to the definition as there were uncertainties about which particular scenarios would be licensable, for example, if a dog walker picked up dogs from their houses and then took them to their house for the day, there may be an argument that this was technically doggy day care. A Member queried whether the new legislation applied to riding schools and was advised that riding establishments were already covered by legislation but the new regulations included animals used for entertainment, for example, a clown bringing out an iguana at a child's party, falconers etc. Clarification was provided that agricultural animals were covered by the County Council under different legislation. A Member pointed out that school fetes and community events often had a 'petting zoo' and the Environmental Health Manager confirmed they would need to be licensed but a technical matter which needed to be resolved was where the animal should be licensed, for instance, if an animal from Wales was brought to an event in Tewkesbury Borough.

- 15.7 Having considered the information provided, it was

RESOLVED That the updates in respect of the significant changes to the Houses in Multiple Occupation regime and the implementation of the Animal Welfare Regulations 2018 be **NOTED**.

LIC.16 LICENSING AUDIT ACTION PLAN

- 16.1 The report of the Environmental Health Manager, circulated at Pages No. 103-114, provided an update on the progress made against the actions arising from the internal audit of the licensing function. Members were asked to consider the report.
- 16.2 The Environmental Health Manager advised that the Licensing Audit Action Plan, attached at Appendix 1, set out progress to date; whilst the majority of actions had been completed, four required further work and these were outlined at Page No. 104, Paragraph 2.2 of the report. The requirement to provide Lifting Operations and Lifting Equipment Regulations (LOLER) certificates required an amendment to the Council's Hackney Carriage (Taxi) and Private Hire Policy and it was noted that a Working Group had been established earlier in the meeting to undertake that work. Safeguarding training had been provided for the majority of taxi drivers in March and April 2018 and sessions had now been arranged for November and December 2018 for those who had been unable to attend the initial sessions, and for any new drivers. Any drivers who did not take up the training opportunity would be in breach of their licence and the enforcement procedure would be commenced which could ultimately result in their licence being suspended. In terms of future safeguarding training sessions, any new drivers would be directed to Gloucester City Council and

would be required to provide their certificate of completion to Tewkesbury Borough Council. With regard to the action in relation to cost recovery of fees associated with animal boarding establishments, since the original audit was carried out, a new inspections and ratings regime had been introduced as part of the Animal Welfare Regulations and a new charging scheme was being developed as a result. It was intended to apply the model that had recently been used for the charging scheme for HMOs whereby the various tasks had been identified and associated costs calculated. The Environmental Health Manager went on to advise that it had been intended to carry out a programme of inspections of licensed premises alongside food inspections; unfortunately, this had not been possible due to reduced resources. A Senior Licensing Officer post had been agreed as part of the recent service review and an inspection programme would be put in place as soon as that post had been filled. He stressed that, whilst there was currently no formal inspection programme, premises were inspected as and when necessary and officers would be aware of any issues and would deal with them accordingly.

- 16.3 In response to a Member query as to how often taxi drivers would be expected to undergo safeguarding training, the Environmental Health Manager understood this would be every three years. He went on to explain that he was in discussion with Cheltenham Borough Council about the possibility of introducing a training day which would cover a range of key components including equalities training and the knowledge test as well as safeguarding training. This would be considered as part of the review of Hackney Carriage (Taxi) and Private Hire Policy.

- 16.4 It was

RESOLVED That the progress made against the Licensing Audit Action Plan be **NOTED**.

The meeting closed at 3:50 pm