

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Licensing Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Thursday, 5 March 2015 commencing
at 2:30 pm**

Present:

Chairman
Vice Chairman

Councillor A C Tugwell
Councillor M Dean

and Councillors:

P W Awford, Mrs K J Berry, Mrs G F Blackwell, B A Jones, Mrs E J MacTiernan, J R Mason
(Substitute for Mrs J E Day), Ms A E Ricks, H A E Turbyfield and B Whelan

LIC.20 ANNOUNCEMENTS

- 20.1 The evacuation procedure, as noted on the Agenda, was advised to those present.
- 20.2 The Chairman indicated that he had agreed to accept an urgent item of business in relation to the suspension or revocation of hackney carriage and private hire driver licences which would be considered at Agenda Item 8.

LIC.21 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

- 21.1 Apologies for absence were received from Councillors Mrs J E Day, V D Smith, M J Williams, P N Workman and Mrs C Wright. Councillor J R Mason would be acting as a substitute for the meeting.

LIC.22 DECLARATIONS OF INTEREST

- 22.1 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.
- 22.2 There were no declarations made on this occasion.

LIC.23 MINUTES

- 23.1 The Minutes of the Licensing Committee meeting held on 16 October 2014, the Special Licensing Committee meeting held on 4 December 2014 and the Licensing Sub-Committee (Street Trading and Hackney Carriage and Private Hire Vehicles, Drivers and Operators) meeting held on 28 January 2015 were approved as correct records and signed by the Chairman.

LIC.24 REVIEW OF TAXI AND PRIVATE HIRE LICENSING POLICIES

- 24.1 Attention was drawn to the report of the Licensing Team Leader, circulated at

Pages No. 8-66, which asked Members to agree to review the existing taxi and private hire licensing policies.

24.2 Members were advised that there were currently five sets of policies, five sets of conditions and one set of bylaws governing hackney carriage and private hire licensing at Tewkesbury Borough Council. As a result, there were duplications across the policies and conditions which could cause confusion for existing licence holders and Officers. In addition, there were several matters, set out at Paragraph 2 of the report, that were not currently addressed within the policies which could leave the Council vulnerable to challenge. It was intended to produce one clear and concise document which covered all of these aspects. The Licensing Team Leader explained that the bylaws needed to be updated in terms of their language and specification, for example, bylaw 3 h) required hackney carriage proprietors to provide an efficient fire extinguisher but it did not specify the type or the weight and no reference was made to carrying additional items such as a first aid kit. Similarly bylaw 3 k) referred to the need for hackney carriage proprietors to carry a spare wheel and tyre but many modern vehicles did not have a spare and it was important that the Council's policy reflected modern technology. One Legal had indicated that there would be a cost attached to updating the bylaws and a recommendation on how to proceed with that aspect would be brought to the next meeting of the Committee. Members agreed that it made sense to have a single policy document which would be reviewed on a five yearly basis. The Licensing Team Leader went on to explain that there were a number of operational, procedural and day to day matters included within the policies and it was proposed that these be removed and that supporting guidance and procedure notes be supplied to assist applicants. A Member indicated that he had some concerns over what would be removed from the policy and whether there could be a risk of challenge if certain elements were only included in the guidance and not explicitly stated in policy. The Licensing Team Leader explained that the purpose of the policy was to have a prescribed procedure whereas the guidance would be purely to assist the applicant. He stressed that it would not be a completely separate document, rather it would be included as an annex and therefore would form part of the policy. The Legal Adviser confirmed that this would be acceptable in terms of legal challenge.

24.3 Members were informed that the current policy required applicants and existing drivers to be compliant with Group 2 Medical Fitness to Drive (known as Group 2 Medical) and to take a test every three years. This was not in line with Government policy or Driver and Vehicle Licensing Agency (DVLA) guidance which did not require drivers to be tested so frequently. Group 2 Medical was normally issued at age 21, but may be issued at age 18, and was valid until the age of 45. It was renewable every five years until age 65, unless restricted to a shorter period for medical reasons; from age 65 it was renewable on an annual basis. It was intended to bring the policy in line with Government guidance. Clarification was provided that, although Group 1 Medical would be sufficient for taxi and private hire drivers, the Council's adopted policy required all hackney carriage and private hire drivers to have a Group 2 Medical every three years. A Member queried whether there was a problem with asking for more than was required and the Legal Adviser explained that the key consideration was whether it was reasonable. In her opinion it was important not to remove the ability to require frequent tests; under Government policy a driver could feasibly have a test at age 21 and not need to have another until age 45 during which time they may develop medical conditions, of which they may not even be aware, that could put members

of the public at risk. Members might wish to consider testing over a longer period e.g. 5 or 10 years but she would be reluctant to remove the requirement completely.

- 24.4 A Member felt that the requirement to have a medical was often the only time hackney carriage and private hire drivers would go to see a medical practitioner and he agreed that it was important to ensure that regular testing was carried out in order to detect any underlying conditions. He was in favour of reducing the level of medical required to a Group 1 Medical but still insisting that a test be carried out every three years. A Member was of the view that regular health checks were essential for the safety of the general public and, in his opinion, three yearly checks should be a minimum. A Member queried what follow-up procedures were in place if a medical was missed for any reason and the Licensing Team Leader confirmed that the medical was carried out as part of the licence renewal; a licence would not be renewed without a medical certificate. A Member went on to support the views that had been expressed and indicated that there was a better chance of identifying any conditions with regular testing and this also encouraged drivers to think about their health. The Member questioned what the difference was between a Group 1 Medical and a Group 2 Medical and was informed that it would be too technical to explain the medical differences; however, Group 1 Medical enabled people to drive up to eight seater vehicles but not larger buses. The Department of Transport recommended that Councils adopt Group 2 Medical, which was for commercial drivers, and the Licensing Team Leader confirmed that the majority of local authorities had done this. A Member expressed the view that the requirement should be for a Group 2 Medical every three years; if anyone wished to put forward an alternative view, they could do so through the consultation process. Members agreed that this was the requirement which should be included within the draft policy.
- 24.5 Members were informed that the current policy required all new applicants to take a Gloucestershire County Council driving assessment, however, under new legislation, all new applicants and existing drivers could take the Driver and Vehicle Standards Agency (DVSA) taxi driver assessment which more authorities in Gloucestershire were starting to adopt. The Licensing Team Leader indicated that he would put forward a recommendation as to which test would be most appropriate once he had evaluated the details of the DVSA test. In response to a query as to whether both tests could be recognised by the Licensing Authority, the Licensing Team Leader advised that the costs of the tests would be different and drivers would be likely to opt for the cheapest one. There was no requirement to offer options to drivers in terms of driving assessments and he would come back to the Committee with the pros and cons of the two different tests in order to allow Members to make an informed decision as to which would be most appropriate for Tewkesbury Borough Council.
- 24.6 The Licensing Team Leader went on to explain that an increasing number of hackney carriage and private hire applicants did not have English as their first language, however, the current policy was not very clear on the standard of English required from drivers. Given that the majority of communication between a driver and their passenger was verbal, it was proposed that there should be a requirement for applicants to demonstrate their ability to converse in English in an industry administered test. It was suggested that those drivers who already had particular qualifications would be exempt and that applicants would be responsible for the cost of completing the test. Details of the accepted qualifications would be provided at the next meeting of the Committee. A Member questioned who would prescribe the test and was advised that there was currently only one test available which was conducted over the telephone. It took approximately 15-20 minutes and the results were available around 30 minutes later. Members were also asked to consider whether they would like to introduce a requirement for new applicants and/or existing licence holders to obtain an NVQ certification; if this was included in the policy there would be no need to introduce a separate spoken English test as this was covered within that qualification. There was a cost implication associated with the NVQ and the Licensing Team Leader undertook to find out what this would

be. It was to be borne in mind that the Council's taxi fleet was relatively small compared to larger cities and Members may feel that an NVQ would put an unnecessary burden on drivers, the majority of which were school contractors who would already have undergone the necessary training. A Member expressed the view that the NVQ was a worthwhile qualification which contained various different elements and he would look favourably on its introduction, particularly as this would negate the need for a separate English test. A Member raised concern that a telephone test for spoken English could be open to abuse as an applicant could get someone else to take it for them. In response, the Licensing Team Leader provided assurance that the test would be supervised at the Council Offices. All driver applications had to be made in person and supported with the necessary photographic identification e.g. passport, driving licence etc. so they would be easily identifiable when they came to the Council Offices to take the test. Another Member expressed the view that an NVQ qualification would be very different from a conversational English test and careful consideration should be given to which would be most appropriate. The Member indicated that his concern was that the cost of introducing a requirement for an NVQ qualification could be inhibitive. The Legal Adviser indicated that the NVQ could be cost effective overall but she would need to look at exactly what it involved before she could make an informed recommendation. A Member indicated that, when Cheltenham Borough Council had introduced the NVQ, existing drivers had been given three years in which to achieve the qualification and she suggested that a similar approach could be taken if Members felt that this was the best way forward for Tewkesbury Borough Council. A Member felt that it was important to take into account the resource implications of introducing a telephone test for new and existing drivers. In response, the Licensing Team Leader clarified that there would be some exemptions, for example, someone with a degree would not be expected to take a test, and he reminded Members that the test would only be for drivers who did not have English as a first language. Officers already set aside 40 minutes for appointments with applicants and the test would be incorporated into that time so it would not have a significant impact on resources. The Legal Adviser explained that it was very important to ensure that the Licensing Authority was not discriminatory and, subsequently, it was agreed that the two options be presented in more detail at the next meeting of the Committee.

- 24.7 The Licensing Team Leader went on to advise that hackney carriage and private hire drivers needed to have a good working knowledge of the area in which they were licensed and they should recommend the cheapest and most direct route to passengers. Hackney carriage drivers were required to pass a knowledge test under the current policy on that basis, however, this was not a requirement for private hire drivers who would normally have time to check the route on a map and discuss the options with the hirer. The Department of Transport recognised that most Councils asked drivers to pass a knowledge test as a condition of granting a licence and, in order to ensure that high standards were maintained, Members may wish to introduce a test for private hire drivers. A Member considered that this would be a good opportunity to ensure that drivers were aware of local policies and it was generally felt that this would be a good way forward.
- 24.8 The Licensing Team Leader explained that there was currently one policy for the relevance of convictions and a separate policy for suspension, revocation and refusal to renew driver licences. It was considered that a broader policy would give more authority to determine whether the person was "fit and proper" to hold a licence. It was proposed to have one policy, which included a list of specific offences as an annex which would prevent the whole policy from having to be brought back to the Committee when it required updating. Members agreed that this would be beneficial. The Licensing Team Leader went on to explain that currently the Council had no policy on EU driving licences and it was felt that the new policy should provide clarity on accepting such licences. By law, the Council

had to accept a European Economic Area (EEA) driving licence if it was converted to a DVLA licence; applicants had to convert their licence before submitting their application. The current policy required all applicants to undergo an enhanced Disclosure and Barring Service (DBS) check which was renewable every three years following the grant of the licence. It was recommended that there be no change to the requirement and that a policy of random and interim DBS checks should be introduced. The Licensing Team Leader explained that information on licensed drivers was sometimes received from the Police under the 'notifiable occupations requirements' and an interim DBS check would help a Licensing Sub-Committee to determine whether a driver was a fit and proper person to hold a licence; it would protect drivers against discrimination as the Sub-Committee could make a decision based on fact rather than information received. Having this option in the policy would give Officers the freedom to carry out interim checks when required and confirmation was provided that drivers would be asked to give their consent. Members felt that the new policy should provide clarity and legality on accepting EU driving licences and they agreed that it would be beneficial to introduce a policy of interim DBS checks.

- 24.9 Members were advised that the current policy was not very clear on the disclosure or reporting of convictions, cautions and traffic offences and this needed to be addressed within the new policy. Furthermore, it was proposed that a requirement should be introduced for medical conditions to be reported and to allow interim medical checks to be carried out where necessary. In addition, there was currently no policy on accident notifications; it was best practice to report accidents within 72 hours, or at Officer discretion in case of emergency, for instance, if the driver was taken to hospital. Members agreed that all of these points should be addressed within the new policy.
- 24.10 The Licensing Team Leader explained that vehicles between one and five years old were required to undergo an MOT/Licensing Authority Vehicle Test every 12 months; vehicles over five years old were required to undergo a test every six months. It was considered that these periods should continue to apply within the new policy but that the testing specification should be updated. There was currently one designated garage which carried out tests on behalf of the Licensing Authority but this would be reviewed as part of the changes to the policy. It was necessary to ensure that a formal arrangement was in place and that applicants and drivers were clear where they needed to go to get their vehicles tested. A Member raised concern as to how the Council could be sure that garages were honest and above board and she was informed that a traffic light system was in place to ensure that garages did not overcharge and they would be expected to follow certain guidelines.
- 24.11 It was noted that there was currently no policy on disabled access vehicles/wheelchair accessible vehicles, or modified vehicles or Q plate vehicles; provided a vehicle passed an MOT then it was able to be licensed. It was proposed that the new policy would allow the Council to decide which vehicles to licence. Furthermore, there was no policy for low emission vehicles or electric vehicles and enquiries were increasing about these new technologies. A Member was of the view that the type of vehicle was irrelevant provided that it met the European regulations standard for disabled users. A Member queried whether the Council would promote low emission vehicles and encourage taxi drivers to buy hybrid vehicles and the Licensing Team Leader explained that, whilst there would be no problem with offering incentives, there would clearly be a cost implication associated with that. A Member felt that this was something which should be taken into account when conducting the review of charges in future.
- 24.12 The Licensing Team Leader went on to advise that the current policy on exemption from displaying licence plate and door stickers for private hire drivers was ambiguous. Under the existing arrangements a driver could write to the Council to

ask for an exemption, for instance, if they drove an executive car. It took much more time and effort to enforce against such vehicles and it was proposed that the new policy would address this with a robust set of requirements in order to obtain the exemption, for instance, drivers would need to prove that at least 80% of clients were private clients and give reasons as to why the exemption was necessary. In addition, it was suggested that the new policy should include updated responsibilities and conditions for private hire operators, including a requirement for public liability insurance where necessary. This was intended to address cross-border trade as there were operators with licences in Tewkesbury Borough, Cheltenham Borough and/or Gloucester City. If there were more robust conditions and responsibilities in place then it would be possible to identify any breaches more quickly; complaints were received from time to time that customers had ordered a taxi from Cheltenham and had been picked up by a Tewkesbury taxi. Data was currently only checked on an annual basis and this change would make it possible to do spot checks when carrying out joint enforcement with neighbouring authorities. Overall, the new policy would provide a robust and fair licensing regime for taxis and private hire with public safety and safeguarding at its heart. All Members agreed with this sentiment and felt that the suggestions which had been made were appropriate and necessary. On that basis it was proposed, seconded and

RESOLVED That it be **AGREED** that a review of existing taxi and private hire licensing policies be undertaken incorporating the points set out at Paragraph 2.1 of the report and those raised by the Committee.

LIC.25 DELEGATED AUTHORITY TO SUSPEND OR REVOKE HACKNEY CARRIAGE OR PRIVATE HIRE DRIVER LICENCES

- 25.1 Attention was drawn to the report of the Licensing Team Leader, circulated separately, which asked Members to agree to delegate authority to the Deputy Chief Executive to immediately suspend or revoke a hackney carriage or private hire driver's licence where it was considered necessary in the interest of public safety and that a 'fast track' procedure be adopted as set out at Paragraph 2.2 of the report.
- 25.2 Members were advised that Section 61 (2B) of the Local Government (Miscellaneous Provisions) Act 1976 enabled a decision to suspend or revoke a hackney carriage or private hire driver's licence to take immediate effect, should the Council believe it to be necessary in the interests of public safety. There was a need to ensure that the policies and procedures for suspending or revoking a hackney carriage or private hire licence were lawful to avoid legal challenge and, as the Council's current policy did not address cases where immediate action was required, Members were asked to agree that authority be delegated to the Deputy Chief Executive to immediately suspend or revoke a hackney carriage or private hire driver's licence where it was considered necessary in the interest of public safety. If Members agreed the delegation, a 'fast track' procedure should be adopted to re-licence those drivers who had their licence revoked but had subsequently been found to be fit and proper. In those instances it was proposed that the driver should supply the Council with a new application form but that there be no subsequent application fee, all pre-check enquiries would stand and the dates they were previously due to expire would be valid, as would the licence itself. Should Members approve the recommendation, it could be subject to review as part of the larger review of taxi licence policies.
- 25.3 A Member indicated that there had been incidents where passengers had accused drivers of indecent assault to avoid paying fares and she raised concern about an approach which assumed that the driver was guilty before having an opportunity to state their case. Whilst this was a valid point, Members were advised that the

Government was now suggesting that Councillors could be subject to a five year jail term for overlooking safeguarding issues and this was something which the Council needed to guard against. The Licensing Team Leader explained that the Council was able to immediately suspend or revoke hackney carriage/private hire driver's licences where it was in the interest of public safety to do so and he clarified that the Council would not be judging whether the driver was innocent or guilty but whether they were a fit and proper person to hold a licence in order to ensure that the public were not at risk. A Member agreed that this was the right approach and indicated that if a similar accusation was made against someone working in a school they would be removed from the situation until they could prove their innocence. Whilst malicious complaints were a concern it was about having the right weight of information to take action and there were steps to reinstate the licence if the driver was proven to be fit and proper. A Member felt that the approach might seem harsh but protection of the public must be the Council's main priority.

25.4 Having considered the information provided and views expressed it was

RESOLVED

1. That authority be delegated to the Deputy Chief Executive to immediately suspend or revoke a hackney carriage or private hire driver's licence where considered necessary in the interest of public safety.
2. That a 'fast track' procedure be adopted as set out in Paragraph 2.2 of the report to re-licence those drivers who have had their licences revoked but have subsequently been found to be fit and proper.

LIC.26 SEPARATE BUSINESS

26.1 On a proposal from the Chairman, it was

RESOLVED

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

LIC.27 SEPARATE MINUTES

27.1 The separate Minutes of the Licensing Sub-Committee (Street Trading and Hackney Carriage and Private Hire Vehicles, Drivers and Operators) meeting held on 28 January 2015 were approved as a correct record and signed by the Chairman.

The meeting closed at 4:25 pm

