

Licensing Committee

Agenda

Date: Monday, 18th January, 2010
Time: 2.00 pm
Venue: Committee Suite 1, 2 & 3, Westfields, Middlewich Road,
Sandbach CW11 1HZ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Apologies for Absence**

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

3. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a total period of 10 minutes is allocated for members of the public to address the Committee on any matter relevant to the work of the Committee.

Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers.

If a member of the public wishes to ask a question of the Chairman, at least 3 clear working days' notice must be given in writing to the Democratic Services Manager, in order that an informed answer may be given.

4. **Minutes** (Pages 1 - 4)

To approve the minutes of the meeting held on 19 October 2009.

5. **Minutes of Licensing Sub-Committees** (Pages 5 - 18)

To receive the minutes of the Licensing Sub-Committee meetings held on 5 November 2009, 12 November 2009, 23 November 2009, 26 November 2009 and 16 December 2009.

6. **Proposed consultation relating to the policy of limiting the number of hackney carriages within the Congleton zone (zone 1)** (Pages 19 - 22)

To consider a request to authorise the Licensing Manager to carry out a consultation exercise relating to the policy of limiting the number of hackney carriages within the Congleton zone of the Council's area.

7. **Delegation of Functions - 'Minor Variations' (Under Sections 41A-C and 86A-C of the Licensing Act 2003)** (Pages 23 - 26)

To consider proposed changes to the licensing scheme of delegation.

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Committee**
held on Monday, 19th October, 2009 at Committee Suite 1, 2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)

Councillors Rhoda Bailey, T Beard, B Dykes, L Gilbert, E Gilliland, M Hardy
and C Tomlinson

OFFICERS IN ATTENDANCE

Mr M Janes, Licensing Enforcement Officer
Mrs K Khan, Solicitor
Mrs J Zientek, Democratic Services Officer

APOLOGIES

Councillors D Bebbington, Rachel Bailey, G Baxendale, H Davenport,
J Goddard, M Parsons and A Ranfield

64 MR T LESLIE

The Chairman welcomed Mr Tim Leslie of Standards for England, who
was attending the meeting in order to observe local government in action.

65 DECLARATIONS OF INTEREST

Councillor Rhoda Bailey declared that she had received correspondence
in relation to agenda item 6 (Private Hire Vehicle Condition 1.4).

66 PUBLIC SPEAKING TIME/OPEN SESSION

There were no questions from members of the public.

67 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meeting held on 20 July 2009 be
approved as a correct record.

68 MINUTES OF LICENSING SUB-COMMITTEES

RESOLVED – That the minutes of the Licensing Sub Committee meetings
held on 6 August 2009 (9.30am), 6 August 2009 (11.30am), 27 August
2009, 10 September 2009 and 16 September 2009 be approved as correct
records.

69 PRIVATE HIRE VEHICLE CONDITION 1.4

The Committee considered a report regarding condition 1.4 of the Council's private hire vehicle conditions.

At its meeting on 13 March 2009, the Licensing Committee had approved licence conditions in relation to private hire vehicles for implementation from 1 April 2009. The Committee had also resolved that a further consultation exercise be undertaken with the holders of private hire vehicle licences on a proposal to amend the wording of condition 1.4. During the consultation period, four responses had been received.

Although the original purpose of the proposed amendment had been to more effectively limit the size of private hire vehicles which may be licensed, committee members were of the opinion that it would also improve passengers' chances of escaping from vehicles in the case of accident or emergency.

RESOLVED – That condition 1.4 of the Council's private hire vehicle conditions for initial licence applications be amended to read as follows:

"It shall have a minimum of four doors of which either (a) in circumstances where the rear door of the vehicle is not a 'split door,' two doors shall be on the near side and two on the offside or (b) in circumstances where the rear door of the vehicle is a 'split door,' at least three doors shall be fitted to a side of the vehicle. All the doors must be capable of use by persons for both access and egress and of being opened from both the inside and the outside. If the vehicle is fitted with an electronic locking system it must be capable of being overridden to enable the doors to be opened manually."

70 POLICY ON 'EXEMPT PLATING' OF PRIVATE HIRE VEHICLES AND DRIVERS

The Committee considered a report regarding the proposed policy on 'exempt plating' of private hire vehicles and drivers within Cheshire East Borough.

At its meeting on 20 July 2009, the Licensing Committee had approved the draft policy on 'exempt plating' in order that it may be subject to consultation with the trade. No responses were received during the consultation period.

RESOLVED

- (a) That the proposed policy on 'exempt plating' of private hire vehicles and drivers be approved.
- (b) That the power to determine applications for 'exempt plating' in line with the Council's policy be delegated to the Licensing Manager.

This delegation shall be subject to the proviso that the Licensing Manager shall have the discretion to refer such applications to the Licensing Sub-Committee for determination.

71 STREET TRADING - DESIGNATION AS 'PROHIBITED STREET'

The Committee considered a report regarding the proposal to designate the A556 as 'prohibited' for the purposes of street trading.

At its meeting on 20 July 2009, the Licensing Committee had approved the publication of a notice of intention in relation to the proposed designation of the A556, and adjoining streets for a distance of 50 metres, as prohibited streets for the purposes of street trading.

A notice had subsequently been placed in the Knutsford Guardian and consultation letters had been sent to the Cheshire Constabulary, the Highways Agency and the Highways Department of the Council. The Highways Agency had submitted a response supporting the proposal on the grounds of highway safety, and one representation objecting to the proposal had been received from a member of the public.

RESOLVED

- (a) That, in accordance with Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982, the A556 (to its extent within the Borough), together with any adjoining streets for a distance of 50 metres, be designated as prohibited streets for the purposes of street trading, with effect from 23 November 2009.
- (b) That the Borough Solicitor, or officer acting on his behalf, be authorised to publish the required notices of the resolution in (a) above.

The meeting commenced at 2.00 pm and concluded at 2.35 pm

Councillor P Whiteley (Chairman)

This page is intentionally left blank

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Sub-Committee**
held on Thursday, 5th November, 2009 at The Capesthorne Room - Town
Hall, Macclesfield SK10 1DX

PRESENT

Councillor P Whiteley (Chairman)

Councillors T Beard, Rachel Bailey, H Davenport and J Goddard

OFFICERS IN ATTENDANCE

Mr M Janes (Licensing Enforcement Officer) and Mrs K Khan (Licensing Solicitor)

Apologies

Councillors (none)

32 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

33 APOLOGIES FOR ABSENCE

None.

34 DECLARATIONS OF INTEREST

None.

35 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED - That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A) 4 of the Local Government Act 1972 on the grounds that they involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 and public interest would not be served in publishing the information.

36 09/04 APPLICATION FOR A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Sub-Committee considered a report regarding an application for the renewal of a Hackney Carriage Drivers Licence and the grant of a joint Hackney Carriage/Private Hire Drivers Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had

been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Drivers Licence should be granted.

The applicant and his representative attended the hearing and made representations in respect of his application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant was a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application for a Licence be granted subject to the requirement that the applicant successfully completed the Council's theory test relating to the private hire element of the Licence. In addition the Committee informed the applicant that should any further incidents occur in the future, he would be summoned to attend a meeting of the Licensing Sub Committee to determine the future of his Licence.

37 09/05 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS LICENCE

The Sub-Committee considered a report regarding an application for a Joint Hackney Carriage and Private Hire Drivers Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Joint Hackney Carriage and Private Hire Drivers Licence should be granted.

The applicant attended the hearing and made representations in respect of his application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant was a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application for a Licence be granted subject to the requirement that the applicant successfully completed the Council's Hackney Carriage/Private Hire theory test.

38 09/06 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS LICENCE

The Sub-Committee considered a report regarding an application for a Joint Hackney Carriage and Private Hire Drivers Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the

application for a Joint Hackney Carriage and Private Hire Drivers Licence. should be granted.

The applicant and his representative attended the hearing and made representations in respect of his application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant was not a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application be refused.

The applicant was reminded of his right to appeal to the Magistrates Courts within 21 days.

The meeting commenced at 1.00 pm and concluded at 3.15 pm

Councillor P Whiteley (Chairman)

This page is intentionally left blank

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Sub-Committee**
held on Thursday, 12th November, 2009 at East Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor P Whiteley (Chairman)

Councillors Rhoda Bailey, L Gilbert, E Gilliland and M Hardy

OFFICERS IN ATTENDANCE

Mrs K Khan, Solicitor

Mr P Simester, Licensing Officer

Mrs J Zientek, Democratic Services Officer

39 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

40 APOLOGIES FOR ABSENCE

There were no apologies for absence.

41 DECLARATIONS OF INTEREST

There were no declarations of interest.

42 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED - That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A) 4 of the Local Government Act 1972 on the grounds that they involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 and public interest would not be served in publishing the information.

43 09/08 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Driver's Licence should be granted.

The applicant attended the hearing and made representations in respect of his application. A friend of the applicant also attended the hearing.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant is not a fit and proper person to hold a hackney carriage or private hire drivers licence at this time and that the application for a licence be refused.

44 09/07 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGES & PRIVATE HIRE VEHICLES

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Driver's Licence should be granted.

The applicant attended the hearing and made representations in respect of his application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant is a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application for a licence be granted, subject to successful completion of the Council's theory test.

45 09/09 APPLICATION FOR A LICENCE TO DRIVE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Driver's Licence should be granted.

The applicant attended the hearing and made representations in respect of his application. A supporter of the applicant also attended the hearing and made representations in support of the applicant.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant is a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application for a licence be granted, subject to successful completion of the Council's theory test.

The meeting commenced at 10.00 am and concluded at 11.34 am

Councillor P Whiteley (Chairman)

This page is intentionally left blank

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Sub-Committee**
held on Monday, 23rd November, 2009 at The Capesthorpe Room - Town
Hall, Macclesfield SK10 1DX

PRESENT

Councillor P Whiteley (Chairman)

Councillors G Baxendale and C Tomlinson

OFFICERS PRESENT

Mr J Hoper (Licensing Officer) and Mrs K Khan (Licensing Solicitor)

Apologies

None

46 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

47 DECLARATIONS OF INTEREST

None.

48 APPLICATION FOR A PREMISES LICENCE VARIATION - THE OXFORD, 73 OXFORD ROAD, MACCLESFIELD, CHESHIRE, SK11 8JG

The Sub-Committee had been asked to consider the application for the variation of a Premises Licence under section 34 of the Licensing Act 2003.

The applicant, two local residents and representatives from Environmental Health attended the hearing and made representations with respect to the application.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the written representation of local residents the following course of action had been agreed:

RESOLVED

The Licensing Sub-Committee resolved that that the variation(s) be granted subject to a limitation on the hours for live music, subject to the imposition of an additional condition that “except for the purposes of access and egress doors and windows shall remain closed whilst live music is taking place and (2) on the basis of the following hours”:

Live music (to take place indoors only)

Sunday to Thursday 20.00 to 22.00

Friday and Saturday 20.00 to 23.00

Anything of a similar description to live music recorded music and dance

(to take place indoors only)

Monday to Sunday 20.00 to 23.15

(to include the extended hours for New Years Eve – i.e. from the end of permitted hours on New Years Eve to the commencement of permitted hours on New Years Day)

Provision of facilities for making music

Provision of facilities for dancing

Provision of facilities for entertainment similar to music and dance

(all of which are to take place indoors only)

Sunday to Thursday 20.00 to 23.15

Friday and Saturday 20.00 to 23.30

(to include the extended hours for New Years Eve – i.e. from the end of permitted hours on New Years Eve to the commencement of permitted hours on New Years Day)

The parties to this hearing were also reminded that both the applicant and interested parties who made relevant representations had the right to appeal the decision to the Magistrates Court within 21 days.

The meeting commenced at 1.00 pm and concluded at 2.05 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Sub-Committee**
held on Thursday, 26th November, 2009 at West Committee Room -
Municipal Buildings, Earle Street, Crewe

PRESENT

Councillor P Whiteley (Chairman)

Councillors Rachel Bailey and E Gilliland

OFFICERS IN ATTENDANCE

Ms S Edge, Environmental Health Officer
Mr N Kelly, Environmental Health Officer
Miss C Kerr, Licensing Officer
Mrs K Khan, Solicitor
Mrs J Zientek, Democratic Services Officer

49 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

50 DECLARATIONS OF INTEREST

There were no declarations of interest.

51 APPLICATION FOR A VARIATION TO PREMISES LICENCE - UNION VAULTS, HIGH STREET, NANTWICH

The Sub-Committee considered a report regarding an application to vary the premises licence for the Union Vaults public house, 15 High Street, Nantwich under section 34 of the Licensing Act 2003.

Sub-Committee Members noted that the Environmental Health Service had withdrawn its objection at the commencement of the hearing.

A local resident, the applicant and the applicant's representative attended the hearing and made representations with respect to the application.

Before consideration of the substantive issue, the local resident made a request for an adjournment. Having considered representations from both parties in relation to this request, the Sub-Committee resolved to refuse the request and to proceed with the hearing.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of:

- The Secretary of State's Guidance under section 182 of the Licensing Act 2003
- Cheshire East Borough Council's Statement of Licensing Policy
- The four licensing objectives (namely the prevention of crime and disorder, public safety, the prevention of public nuisance, and the protection of children from harm)
- All the evidence, including the written representation of a local resident

the following course of action had been agreed:

RESOLVED – That the application to vary the Premises Licence for the Union Vaults, High Street, Nantwich by removing the condition which requires the beer garden/outdoor drinking area to be closed to customers by 23.30 hours each evening be granted.

The meeting commenced at 10.00 am and concluded at 12.00 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Sub-Committee**
held on Wednesday, 16th December, 2009 at Committee Suite 2/3 -
Westfields, Middlewich Road, Sandbach, CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)

Councillors H Davenport, B Dykes, M Parsons and A Ranfield

OFFICERS IN ATTENDANCE

Mr M Janes, Licensing Enforcement Officer
Mrs K Khan, Solicitor
Mrs J Zientek, Democratic Services Officer

52 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

53 APOLOGIES FOR ABSENCE

There were no apologies for absence.

54 DECLARATIONS OF INTEREST

There were no declarations of interest.

55 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED - That the press and public be excluded from the meeting during consideration of the following items pursuant to Section 100(A) 4 of the Local Government Act 1972 on the grounds that they involved the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Part 1 of Schedule 12A of the Local Government Act 1972 and public interest would not be served in publishing the information.

56 09/10 APPLICATION FOR A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Driver's Licence should be granted.

The applicant attended the hearing and made representations in respect of his application. A relative of the applicant also attended the hearing and made representations in support of the applicant.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant is a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence and that the application for a licence be granted, subject to successful completion of the Council's theory test. The licence to be granted for a probationary period of twelve months to allow the applicant to demonstrate that he continues to be a fit and proper person to hold a licence.

57 09/11 APPLICATION FOR A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Sub-Committee considered a report regarding an application for a Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the application fell within the Council's policy for determination by the Sub-Committee. Accordingly the hearing had been convened to enable the Sub-Committee to determine whether the application for a Hackney Carriage/Private Hire Driver's Licence should be granted.

The applicant attended the hearing and made representations in respect of his application. A relative of the applicant also attended the hearing.

After a full hearing of the application and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that after taking account of all of the evidence, including the applicant's oral representations, the following course of action had been agreed.

RESOLVED – That the applicant is not a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence, due to the very serious nature of the applicant's most recent conviction, and that the application be refused.

The meeting commenced at 1.00 pm and concluded at 2.30 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING COMMITTEE

Date of Meeting: 18 January 2010

Report of: Mr A Potts, Interim Licensing Manager

Subject/Title: Proposed consultation relating to the policy of limiting the number of hackney carriages within the Congleton zone (zone 1).

1.0 Report Summary

- 1.1 The report provides details of the current position in relation to the limit on numbers of hackney carriage licences within the Congleton zone (zone 1) and seeks approval for a consultation exercise in relation to this policy.

2.0 Recommendations

- 2.1 The Licensing Committee is requested to authorise the Licensing Manager to carry out a consultation exercise, as set out within the report, relating to the policy of limiting the number of hackney carriages within the Congleton zone of the Council's area.

3.0 Reasons for Recommendations

- 3.1 The Licensing Committee is requested to provide its approval so that the Licensing Manager may take appropriate steps to commence the process.

4.0 Wards Affected

- 4.1 Alsager, Congleton Rural, Congleton Town East, Congleton Town West, Middlewich, Sandbach, Sandbach East and Rhode.

5.0 Local Ward Members

- | | | |
|-----|-----------------------|--|
| 5.1 | Alsager - | Rod Fletcher
Derek Hough
Shirley Jones |
| | Congleton Rural - | Les Gilbert
Andrew Kolker
John Wray |
| | Congleton Town East - | David Brown
Peter Mason
Andrew Thwaite |

Congleton Town West - Gordon Baxendale
Roland Domleo
David Topping

Middlewich - Paul Edwards
Simon McGrory
Michael Parsons

Sandbach Stella Furlong
Gillian Merry
Barry Moran

Sandbach East & Rhode - Elsie Alcock
Rhoda Bailey
Andrew Barratt

**6.0 Policy Implications including - Climate change
- Health**

- 6.1 As set out within the report, the Congleton zone currently has a policy of limiting the number of hackney carriages whilst the Macclesfield and Crewe zones are 'de-limited.' The report seeks to obtain approval for consultation in relation to the Council's current policy in relation to the Congleton zone.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 There will be costs associated with a consultation exercise. It is estimated that public notices in local newspapers would cost in the region of £1,500; that there would be postage costs in the region of £400 together with the costs associated with officer time required in the preparation of consultation documentation and collation of responses. It is proposed that these costs will be met within existing budgets.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 Under the provisions of the Town Police Clauses Act 1847 the Borough Council has the power to licence hackney carriages.
- 9.2 Section 16 of the Transport Act 1985 provides that the grant of a hackney carriage licence may be refused for the purpose of limiting the number of licensed taxis "if but only if the person authorised to grant licences [local licensing authority] is satisfied that there is no significant demand for the services of hackney carriages (within the area to which the licence would apply) which is unmet."

- 9.3 The Council is required to consult with interested parties when reviewing matters of policy. The law governing consultation was laid down by the Court of Appeal in the case of R v North and East Devon HA ex parte Coghlan [2001] which states:

“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken.”

10.0 Risk Management

- 10.1 Any consultation exercise to be carried out must be in accordance with the requirements set out in paragraph 9.3 above. Any consultation responses received must be taken into consideration before a decision is made. Failure to comply with these requirements would leave a decision open to challenge.

11.0 Background and Options

- 11.1 On 14 January 2009 the Licensing Committee considered a report in relation to ‘zoning’ of the hackney carriage licensing function within the areas of the three predecessor district Councils. Having considered the report, the Committee resolved (a) that the course of taking no action at this time be adopted, thereby allowing the creation of hackney carriage zones on vesting day; and (b) that the Head of Licensing, Cheshire East Council, be requested to undertake a thorough review of the hackney carriage licensing function in the first year of the new authority.
- 11.2 As Members will be aware, the Congleton zone (zone 1) is currently subject to the policy determined by the former Congleton Borough Council of limiting the number of hackney carriages; the current numerical limit being set at 42. The Macclesfield zone (zone 3) and Crewe zone (zone 2) are not subject to a limit on the numbers of hackney carriages. It is suggested that it is appropriate for the Council to determine its position in relation to the issue of limitation of numbers within the Congleton zone as a first stage in the process of reviewing the hackney carriage function.
- 11.3 As set out within the legal implications at paragraph 9, the Council is required to consult with interested parties when reviewing its policy. It is suggested that the consultation exercise would encompass consultation with the local hackney carriage and private hire trade, transport providers, local businesses and other interested parties such as the Police and consumer and passenger groups within the area covered by the Congleton zone. It is suggested that, in addition to direct correspondence with the parties referred to above, the consultation exercise will include a notice in local newspapers circulating in

the area and a notice on the Council's website. It is proposed, in accordance with the Government's Code of Practice on consultation, that the consultation should take place over a twelve week period.

- 11.4 At the conclusion of the consultation exercise a further report will be brought before a future meeting of the Licensing Committee.

12.0 Overview of Year One and Term One Issues

- 12.1 The Committee resolved that the Head of Licensing should undertake a review of the hackney carriage function within Year One.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mr A Potts
Designation: Interim Licensing Manager
Tel No: (01270) 686 620
Email: tony.potts@cheshireeast.gov.uk

CHESHIRE EAST COUNCIL

REPORT TO: LICENSING COMMITTEE

Date of Meeting: 18th January 2009

Report of: Mrs K Khan, Solicitor

Subject/Title: Delegation of functions – ‘minor variations’ (under sections 41A-C and 86A-C of the Licensing Act 2003)

1.0 Report Summary

- 1.1 The purpose of the report is to seek approval for changes to the licensing scheme of delegation to take account of the ‘minor variations’ process introduced by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009.

2.0 Recommendations

- 2.1 The Licensing Committee is requested to delegate the power to determine applications under sections 41A-C and 86A-C of the Licensing Act 2003, including cases where relevant representations are received and not withdrawn, to the Head of Safer and Stronger Communities.

3.0 Reasons for Recommendations

- 3.1 The scheme of delegation currently delegates licensing functions under the Licensing Act 2003 to the Head of Safer and Stronger Communities, subject to certain exceptions, including circumstances where relevant representations have been received and not withdrawn. The Secretary of State’s Guidance to licensing authorities (issued under section 182 of the 2003 Act) recommends that decisions on ‘minor variations’ should be delegated to licensing officers.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications including - Climate change - Health

- 6.1 None.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

7.1 None

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

8.1 None.

9.0 Legal Implications (Authorised by the Borough Solicitor)

9.1 The Licensing Act 2003 has been amended by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 which inserted sections 41A to 41C. These sections, which were commenced on 29th July 2009, make provision for a simplified process in relation to ‘minor variations.’

9.2 Paragraph 25.2.8 of Part III of the Constitution provides that subject to certain specified exceptions, the Head of Safer and Stronger Communities is authorised to discharge licensing functions under the Licensing Act 2003. Paragraph 25.4.2 provides an exception to the power in paragraph 25.2.8 and states “the determination of an application under the Licensing Act 2003 [or Gambling Act 2005] where relevant representations have been received and are not withdrawn shall be referred to the Licensing Sub-Committee.”

9.3 Paragraph 8.36 of the Guidance to local authorities issued by the Secretary of State under section 182 of the 2003 Act states: “On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.”

10.0 Risk Management

10.1 There is a risk of legal challenge to decisions taken by the licensing authority if the individual/body taking such decisions does not have the correct delegation to do so.

11.0 Background and Options

11.1 The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 inserted new provisions into the Licensing Act 2003. These provisions establish procedures for the variation of premises licences and club premises certificates in cases where the licensing authority considers that none of the variations proposed could have an adverse effect on any of the licensing objectives. The purpose of the new provisions is to “save time, money and regulatory resources by allowing variations that could not impair the promotion of the licensing objectives to be made to premises

licences and club premises certificates through a simplified and less costly procedure.”¹

11.2 An application may not be made under the new provisions if the effect of the variations proposed would be:

- to extend the period for which a premises licence has effect;
- to vary substantially the premises to which a premises licence or club premises certificate relates;
- to specify (in a premises licence) an individual as the premises supervisor;
- to authorise the sale or supply of alcohol or to increase the amount of time on any day during which alcohol may be sold by retail or otherwise supplied;
- to disapply the mandatory condition concerning the supervision of alcohol sales by a Personal Licence holder and the need for a DPS at community premises.

11.3 In determining an application the authority must consult such of the responsible authorities as it considers appropriate and must take into account any relevant representations by those authorities or an interested parties. The licensing authority must grant an application only if it considers that none of the variations proposed in the application could have an adverse effect on the promotion of the licensing objectives. In any other case the authority must reject the application. Whilst licensing authorities must take any representations into account before making a decision there is no right to a hearing (as there is in relation to a ‘full’ variation application). As set out within paragraph 9.3 above the recommendation from central government is that decisions on minor variations should be delegated to officers.

11.4 The scheme of delegation currently delegates licensing functions under the Licensing Act 2003 to the Head of Safer and Stronger Communities, subject to certain exceptions, including circumstances where relevant representations have been received and not withdrawn. Whilst the Licensing Section has received a number of applications for minor variations, in each of these cases there have been no representations and therefore officers have had delegated authority to determine the applications. In accordance with the recommendation within the Secretary of State’s Guidance, this report requests the delegation to the Head of Safer and Stronger Communities of the power to determine applications for minor variations where representations are received and not withdrawn.

12.0 Overview of Year One and Term One Issues

12.1 None.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

¹ Explanatory note to the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009

Name: Mrs K Khan

Designation: Solicitor

Tel No: (01625) 504264

Email: kate.khan@cheshireeast.gov.uk