

Licensing Committee

Agenda

Date: Thursday, 23rd May, 2013
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**

To receive apologies for absence.

2. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any disclosable pecuniary and non-pecuniary 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.

Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

Please contact Julie Zientek on 01270 686466
E-Mail: julie.zientek@cheshireeast.gov.uk with any apologies or requests for further information or to give notice of a question to be asked by a member of the public

4. **Minutes of Previous Meeting** (Pages 1 - 4)

To approve the minutes of the meeting held on 14 January 2013.

5. **Minutes of Licensing Sub-Committees** (Pages 5 - 40)

To receive the minutes of the following meetings:

Licensing Act Sub-Committee

3 January 2013
11 February 2013
11 March 2013

General Licensing Sub-Committee

1 February 2013
1 March 2013
9 April 2013
3 May 2013
8 May 2013

6. **Draft Charitable Collection Policy** (Pages 41 - 52)

To consider a proposed Charitable Collections Policy.

7. **Proposed Changes to the Joint Hackney Carriage and Private Hire Driver Knowledge Test** (Pages 53 - 62)

To consider proposed changes to the testing arrangements for applicants for Joint Hackney Carriage and Private Hire Driver Licences.

THERE ARE NO PART 2 ITEMS

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Committee**
held on Monday, 14th January, 2013 at Committee Suite 1,2 & 3, Westfields,
Middlewich Road, Sandbach CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)
Councillor W S Davies (Vice-Chairman)

Councillors C Andrew, Rhoda Bailey, H Davenport, I Faseyi, M Hardy,
A Harewood, D Mahon, M Parsons, M Sherratt, L Smetham and J Wray

OFFICERS IN ATTENDANCE

Fiona Crane, Lawyer
Kim Evans, Licensing Team Leader
Julie Zientek, Democratic Services Officer

Apologies

Councillors D Bebbington and G Wait

22 DECLARATIONS OF INTEREST

There were no declarations of interest.

23 PUBLIC SPEAKING TIME/OPEN SESSION

There were no members of the public present.

24 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meeting held on 5 November 2012
be approved as a correct record and signed by the Chairman.

25 MINUTES OF LICENSING SUB-COMMITTEES

RESOLVED – That the minutes of the Licensing Act Sub-Committee
meetings held on 25 October 2012 and 22 November 2012 and the
General Licensing Sub-Committee meetings held on 22 October 2012, 19
November 2012, 3 December 2012 and 17 December 2012 be received.

26 DRAFT STREET TRADING POLICY

The Committee received a presentation on Street Trading by the Licensing
Team Leader and considered a report regarding a proposed Street
Trading Policy.

All applications for a Street Trading Consent were processed in accordance with the policy or working practice adopted in each of the former Boroughs, as the Council did not have a Borough-wide Street Trading Policy.

RESOLVED - That the Licensing Team Leader be authorised to undertake formal consultation on the proposed Street Trading Policy, subject to the following amendments:

- (a) That the typographical errors in paragraphs 5.3 and 6.1 be corrected (objects to objections and training to trading).
- (b) That reference to recycling bins be added under the heading 'Prevention of nuisance or annoyance' in paragraph 7.1.
- (c) That applicants be required to consult with the relevant Council department with respect to the disposal of refuse.
- (d) That a condition be attached to each consent requiring refuse to be disposed of in accordance with the statement on the application form.
- (e) That the reference to (1) in the first sentence of the second paragraph under the heading 'Street Trading – Street Designations (Macclesfield District)' be clarified.
- (f) That on the second page of the application form 'Trading Site' (give Area...) be amended so that the examples given are not the names of former Borough Council areas.

27 PENALTY POINTS SYSTEM FOR HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING

The Committee received a presentation on Licensed Driver Penalty Points Schemes by the Licensing Team Leader and considered a report regarding a proposed Hackney Carriage and Private Hire Licensing Penalty Points Policy.

A penalty points scheme would ensure that minor breaches or misdemeanours were recorded and would identify licence holders whose actions fell short of what was expected or would cause the safety of the public to be undermined. It would also give licence holders a clear indication of what was expected of them and what action the Council would take in respect of breaches of legislation, conditions, or byelaws, thereby raising compliance within the trade.

RESOLVED – That the Licensing Team Leader be authorised to undertake formal consultation on the proposed Hackney Carriage and Private Hire Licensing Penalty Points Policy, subject to the following amendments:

- (a) That the number of penalty points to be issued for 9 (Failure to display fare card) be 6.
- (b) That the number of penalty points to be issued for 10 (Failure to carry Driver/Vehicle Conditions in vehicle) be 6.
- (c) That the typographical error in 14 be corrected.

- (d) That the number of penalty points to be issued for 14 (Failure to carry a fire extinguisher, first aid kit, warning triangle, or fluorescent jacket) be 3 – 6 per item.
- (e) That the number of penalty points to be issued for 27 (Carrying more passengers than stated on the vehicle licence) be 12.
- (f) That the number of penalty points to be issued for 28 (Using a non-approved or non-calibrated taximeter) be 12.
- (g) That the number of penalty points to be issued for 42 (Carrying an offensive weapon in the vehicle) be 9 – 12.
- (h) That the typographical error in 54 be corrected.
- (i) That the trigger for referral of a licence holder to the General Licensing Sub-Committee be the accumulation of 12 or more penalty points in a 12 month rolling period OR 18 or more penalty points in the period during which the licence is held.

The meeting commenced at 2.00 pm and concluded at 3.50 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Thursday, 3rd January, 2013 at Committee Suite 2/3 - Westfields,
Middlewich Road, Sandbach, CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)

Councillors G Wait and J Wray

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Vanessa Selfe, Licensing Admin Officer

Julie Zientek, Democratic Services Officer

25 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

26 DECLARATIONS OF INTEREST

There were no declarations of interest.

27 APPLICATION FOR VARIATION OF PREMISES LICENCE, NEWTON BREWERY INN, 68 WEBBS LANE, MIDDLEWICH

The Sub-Committee considered a report regarding an application to vary the Premises Licence for Newton Brewery Inn 68 Webbs Lane, Middlewich CW10 9DN.

The following attended the hearing and made representations with respect to the application:

- two representatives of the applicant
- a solicitor representing the applicant
- a local resident

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 oral representations made at the meeting and the written representations of interested parties the following course of action had been agreed:

RESOLVED - That the variation be granted as applied for, subject to the following additional agreed conditions:

1. There shall be no entry or re-entry to the premises after 12 midnight save for existing customers observing the ban on smoking in public places.
2. All necessary steps shall be taken to ensure that any noise from the premises shall not be at a level which could cause a noise nuisance at the boundary of the nearest residential premises, therefore:
 - Refuse such as bottles shall be disposed of from the premises at a time (ie between 9am to 9pm) when it is not likely to cause a nuisance to residents in the vicinity of the premises.
 - There shall be placed at all exits from the premises in a place where they can be seen and easily read by the public, notices requiring customers to leave the premises and area quietly.
 - No nuisance shall be caused by noise coming from the premises or by vibration transmitted through the structure of the premises.
 - When regulated entertainment takes place, all windows and external doors shall be kept closed except to allow access and egress.

The applicant and parties who had made relevant representations were reminded of the right to appeal the decision to the Magistrates Court within 21 days.

The meeting commenced at 10.00 am and concluded at 11.20 am

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Monday, 11th February, 2013 at Meeting Room A, Macclesfield
Library, Jordangate, Macclesfield, Cheshire SK10 1EE

PRESENT

Councillor P Whiteley (Chairman)

Councillors C Andrew, A Harewood and P Whiteley

OFFICERS IN ATTENDANCE

Nikki Cadman Licensing Officer
Fiona Crane Lawyer
Annabel Kyle Technical Officer, Environmental Health
Hamish Ruscoe Senior Enforcement Officer, Environmental Health

28 APPOINTMENT OF CHAIRMAN

RESOLVED

That Councillor Paul Whiteley be appointed Chairman for the meeting.

29 DECLARATIONS OF INTEREST

In the interests of openness and transparency, Councillor Whiteley declared that he knew and was known by the applicant's father having, in the past, purchased two vehicles from a business operated by him.

30 NOTICE OF TEMPORARY EVENT: ALDELI, LONDON ROAD, ALDERLEY EDGE SK9 7QB

The Sub-Committee considered a Temporary Event Notice submitted by Aldeli, London Road, Knutsford to which an objection had been lodged by Environmental Health on the grounds of the prevention of public nuisance.

The following attended the hearing and made representations in respect of the notice:

- **The applicant, together with the applicant's father**
- **Representatives from Cheshire East Council Environmental Health Service**

After a full hearing of the notice 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 oral representations made at the meeting and the written representations of the interested parties

the following course of action had been agreed : -

RESOLVED

That a counter notice be issued in accordance with Section 105 of the Licensing Act 2003 against the Temporary Event Notice dated 9 March 2013 submitted by Aldeli, London Road, Alderley Edge.

The meeting commenced at 10.05 am and concluded at 11.20 am

Councillor P Whiteley
Chairman

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **Licensing Act Sub-Committee**
held on Monday, 11th March, 2013 at Meeting Room B, Macclesfield Library,
Jordangate, Macclesfield, Cheshire SK10 1EE

PRESENT

Councillor P Whiteley (Chairman)

Councillors M Hardy and A Harewood

OFFICERS IN ATTENDANCE

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Jim Hopper, Licensing Officer

Julie North, Senior Democratic Services Officer

31 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

32 DECLARATIONS OF INTEREST

There were no declarations of interest.

33 APPLICATION FOR VARIATION OF PREMISES LICENCE, PICCOLINO, 95 KING STREET, KNUTSFORD, WA16 8JJ

The Sub-Committee considered a report regarding an application to vary the Premises Licence for Piccolino, 95 King Street, Knutsford, WA16 8JJ.

The following attended the hearing and made representations with respect to the application:

- the applicant
- a solicitor representing the applicant
- two representatives of Cheshire East Council Environmental Protection

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 oral representations made at the meeting and the written representations of interested parties the following course of action had been agreed:

RESOLVED - That the variation be granted as applied for, subject to the following additional agreed conditions:

- (1) The first floor terrace shall be open to customers only between the hours of 09.00 and 23.00 daily
- (2) Waiter/waitress service shall be provided at all times on the first floor terrace and staff shall be present at all times
- (3) There shall be no vertical drinking on the first floor terrace
- (4) There shall be no disposal of bottles outside the premises between 21.00 and 09.00
- (5) There shall be no disposal of refuse outside the premises or deliveries made to the premises between 21.00 and 07.00
- (6) The use of low power, low noise speakers shall be used on the first floor terrace only providing these comply with the specific requirements and limitations as detailed in the acoustic report by Sol Acoustics
- (7) The DPS or Duty Manager will ensure that any noise emanating from the premises shall not cause a noise nuisance to nearby noise sensitive premises. Regular checks shall be made at the boundary of nearby properties to ensure that no noise nuisance is being caused. Details of these checks shall be recorded in a log kept for this purpose.

The applicant and parties who had made relevant representations were reminded of the right to appeal the decision to the Magistrates Court within 21 days.

The meeting commenced at 10.00 am and concluded at 12.30 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Friday, 1st February, 2013 at Executive Meeting Room 2 - Town Hall,
Macclesfield SK10 1EA

PRESENT

Councillor P Whiteley (Chairman)

Councillors H Davenport, M Parsons and J Wray

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Vilma Robson, Senior Licensing Officer

Julie Zientek, Democratic Services Officer

68 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

69 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor D Mahon.

70 DECLARATIONS OF INTEREST

There were no declarations of interest.

71 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.

72 12-13/36 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder was not in attendance at the hearing.

Following the Licensing Officer's introduction of the case, and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all the evidence, the following course of action had been agreed.

RESOLVED - That the licence holder is no longer a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence, and that the licence be revoked.

The Sub-Committee noted that the licence holder would be reminded of the right to appeal this decision to the Magistrates Court within 21 days.

73 12-13/37 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder, a representative of the licence holder and two witnesses attended the hearing and made representations.

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

RESOLVED

- (a) That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.
- (b) That a formal warning be issued in respect of the Licence Holder's future conduct.

The Licence Holder was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

74 12-13/38 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER 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 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 all the evidence, the following course of action had been agreed.

RESOLVED

- (a) 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 the successful completion of the Council's hackney carriage/private hire theory test;
- (b) That, after a period of one year, the applicant produce a satisfactory medical report confirming that he remains fit to drive a Hackney Carriage or Private Hire vehicle.

The applicant was reminded of the right to appeal this decision to the Magistrates Court within 21 days.

75 12-13/39 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER 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 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 all the evidence, the following course of action had been agreed.

RESOLVED

- (a) 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 the successful completion of the Council's hackney carriage/private hire theory test;
- (b) That the licence be reviewed twelve months from the grant of the licence. The review to include a CRB check (at the applicant's expense) and the receipt of a satisfactory reference from an employer who has employed the applicant to drive taxis.

The applicant was reminded of the right to appeal this decision to the Magistrates Court within 21 days.

76 12-13/40 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant attended the hearing and made representations.

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

RESOLVED - That the applicant remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that the application to renew the licence be granted.

The meeting commenced at 10.00 am and concluded at 3.55 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Friday, 1st March, 2013 at Committee Suite 2/3 - Westfields,
Middlewich Road, Sandbach, CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)

Councillors W S Davies, I Faseyi, M Sherratt and L Smetham

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Jim Hopper, Licensing Officer

Julie Zientek, Democratic Services Officer

77 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

78 APOLOGIES FOR ABSENCE

There were no apologies for absence.

79 DECLARATIONS OF INTEREST

There were no declarations of interest.

80 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.

81 12-13/41 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant attended the hearing and made representations in respect of 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 all the evidence, 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, and that the application for a licence be refused.

The applicant was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

82 12-13/42 CONSIDERATION OF APPLICATION FOR RENEWAL OF A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant was not in attendance at the hearing.

Following the Licensing Officer's introduction of the case, and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all the evidence, the following course of action had been agreed.

RESOLVED – That consideration of this matter be deferred to a future meeting of the General Licensing Sub-Committee, to allow the applicant to attend the meeting.

83 12-13/43 CONSIDERATION OF APPLICATION FOR RENEWAL OF A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant attended the hearing and made representations.

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

RESOLVED - That the applicant remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that the application to renew the licence be granted.

The meeting commenced at 10.00 am and concluded at 12.40 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Tuesday, 9th April, 2013 at The Assembly Room - Town Hall,
Macclesfield SK10 1EA

PRESENT

Councillor P Whiteley (Chairman)

Councillors C Andrew, Rhoda Bailey, W S Davies and M Parsons

OFFICERS IN ATTENDANCE

Sarah Baxter, Democratic Services Officer

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Jim Hopper, Licensing Officer

84 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

85 APOLOGIES FOR ABSENCE

There were no apologies for absence.

86 DECLARATIONS OF INTEREST

There were no declarations of interest.

87 APPLICATION FOR THE RENEWAL OF A SEXUAL ENTERTAINMENT VENUE LICENCE - SCHEDULE 3, LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982 - S T LOUNGE GENTLEMENS CLUB & CHAMPAGNE BAR, 16 GROVE STREET, WILMSLOW, CHESHIRE SK9 1DR

The General Licensing Sub-Committee considered an application by Van Leisure Ltd for the renewal of a Sexual Entertainment Venue Licence for ST Lounge Gentlemen's Club & Champagne Bar, 16 Grove Street, Wilmslow, Cheshire under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act').

The Sub-Committee heard in person from the applicant, the applicant's legal representative and two witnesses for the applicant, and from a number of objectors and representatives of objectors, including a legal representative for Make Wilmslow Matter.

RESOLVED

After a full hearing of the application and in accordance with the rules of procedure, after having taken into consideration:

The provisions of Schedule 3 of the 1982 Act

Home Office Guidance relating to sexual entertainment venues

Cheshire East Borough Council's policy on the licensing of sexual entertainment venues and

All the evidence presented to the Sub-Committee, including the submissions of each of the parties to the hearing and the written objections within the report and the late representations

The case law referred to.

The decision of the Sub-Committee was:

1. The relevant locality for the purposes of this application was 150 metres radius of the Premises
2. To refuse the application for a renewal of a twelve month sexual entertainment venue licence on the grounds that it would be inappropriate having regard (i) to the character of the relevant locality and (ii) the use to which any premises in the vicinity are put

for the following reasons:

The relevant locality included a quality shopping and commercial area, including the pedestrianised Grove Street which was used by a wide range of people including children and young people, families and older people as well as a significant number of residential properties in streets adjacent to Grove Street. The relevant locality also included St Teresa's Catholic Church and Wilmslow Prep School

Within the vicinity there were further sensitive premises, which included residential premises, Wilmslow High School, The Leisure Centre, St Bartholomew's Church, Wilmslow Methodist Church and the United Reformed Church

The change that had taken place during the last twelve months was that ST Lounge was more prominent due to the adverse publicity it had received and as a result people had changed their attitudes and habits and were now tending to avoid walking past it, particularly in the evening when they felt uncomfortable. Evidence was also accepted that they felt uncomfortable in the daytime. The public concern had become more widespread during the last 12 months

An example of the community concern was the objection from Wilmslow Town Council which unanimously made a recommendation to Cheshire East Council that the appropriate number of sexual entertainment venues in this locality should be nil, although Cheshire East Council had not given consideration to such a restriction.

The objections received from a 13 year old and the mother of a 15 year old showed that concerns arose from a wide age range in the community.

The matters which added to the raised awareness and which raised community concern included the following:

- o An A-Board with an ambiguous image on it, left outside when the premises are closed
- o "House rules" flyers found on the pavement outside
- o The website linked to the club
- o The promotion of ST Lounge outside Wilmslow conflicts with the promotion of Wilmslow as a quality shopping destination

Many of the sensitive premises in the vicinity held evening activities and people, including young people, who lived in Grove Avenue and in nearby roads had to walk through the pedestrianised Grove Street and past ST Lounge to attend any activity at the Leisure Centre or either St Teresa's or St Bartholomew's Churches. The alternatives were a much longer walking route or a car journey.

The meeting commenced at 10.00 am and concluded at 6.15 pm

Councillor P Whiteley (Chairman)

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ST LOUNGE, 16 GROVE STREET, WILMSLOW**DECISION NOTICE**

The General Licensing Sub-Committee considered an application for the renewal of a sexual entertainment venue licence in relation to premises known as ST Lounge Gentlemen's Club and Champagne Bar, 16 Grove Street, Wilmslow under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 ('the 1982 Act').

The Sub-Committee heard in person from the applicant, the applicant's legal representative and two witnesses for the applicant, and from a number of objectors and representatives of objectors, including a legal representative for Make Wilmslow Matter.

The Sub-Committee was requested to consider a preliminary issue in relation to the discretion to consider late representations. The Sub-Committee heard that the Licensing Section had received three 'late representations' i.e. objections which were received outside the statutory twenty-eight day consultation period. Details of the representations had been made available to the applicant. The Sub-Committee were advised that case law provides authority for the assertion that the decision-making body has discretion to take late representations into consideration when determining an application under Schedule 3 of the 1982 Act. The parties to the hearing were invited to make submissions in relation to the consideration of the late representations. The Sub-Committee noted the content of these late representations and determined to take two into consideration when making its decision. It determined not to take one late representation into consideration since it had arrived only a few days prior to the hearing and the representation had relevance to planning issues rather than the licensing issues.

The Sub-Committee heard from the Licensing Officer that the Applicant has held a Sexual Entertainment Venue Licence for one year. Prior to that a Premises Licence under the Licensing Act 2003 had been in place. The application is for an annual renewal with the existing conditions to remain. The Sub-Committee heard that there are no Police representations. 390 letters of objection, a petition with approximately 930 signatures and 2 letters of support were received within the 28 day consultation period. Four representations had been queried by the person purported to have sent it in as not being their representation.

The Sub-Committee heard from the applicant's representative. He submitted that the management of the premises during the previous year has been effective and it was contended that there had been no complaints since the premises had been operating.

The applicant's representative made submissions in relation to the content of the objections. R v Liverpool Crown Court, ex parte Luxury Leisure was referred to as authority for the proposition that it is not the number of objections which should be

considered but what they say is what matters and he submitted that many of the objections amounted largely to moral arguments.

Human Rights were referred to by the applicant, contending that rights attached to the existing licence, although it was accepted that the residents' human rights may also be considered.

The applicant's representative contended that new businesses were not deterred by the presence of the premises, since two had been opened during the last year, including a children's shoe shop next door. It was also contended that the reopened shops did not change the character of the area and that to enable the Sub-Committee to determine not to renew the licence there should be a change in the character of the area. He referred to the case of R v Birmingham City Council ex parte Sheptonhurst Limited for this contention.

It was accepted that the same legal considerations do apply to a renewal but that the good conduct of the premises would suggest that a renewal should be granted even in the face of a number of objections.

The applicant's representative contended that this Sub-Committee does not have the power to make the determination on appropriate numbers of Sexual Entertainment Venues in a locality.

The applicants accepted that they advertise flyering on their website, but it is not done in the vicinity of the premises and there is no breach of conditions.

It was accepted by the Sub-Committee that any information from the Wilmslow.Co.Uk website would be disregarded as part of this hearing.

The objections were referred to. The applicant contended that there was no evidence that the premises and other uses, such as betting shops shows the area is in decline and that they blight an area. There is also no evidence to back up the contention that crime is increasing and that two empty shops had now been taken up by retail traders. It was contended that since ST Lounge is closed during the day there is little effect on any of the day time activities in the area and since the police have no objection there would appear to be no foundation that crime is an issue. It was contended that nothing had changed since the original licence was granted therefore the renewal should be granted.

Mr Knowles, the DPS gave evidence. He referred to one representation by an ex-member of staff, who he said left with a grudge. Mr Knowles indicated that the police had undertaken a drugs swab with no results. (Although this was later challenged and it was accepted that a trace for cocaine had been found in one ladies' cubicle, although the police had raised no issue concerning this). He confirmed all staff are offered a chaperone to their car, but they have a choice to take it. With regard to the member of staff being attacked, The Sub-Committee were told she had left in a taxi with a friend, who had been a staff guest at the club and who attacked her on

Racecourse Road. It was confirmed by the Licensing Officer that the Police had indicated that there was no sexual element to the attack and had not suggested that there had been any breach of conditions. Mr Knowles confirmed that he operated the premises within the time conditions of the licence and that drunkenness was not an issue at the premises. He confirmed that any flyering is done away from the area.

Mr Butterworth, a licensing consultant acting on behalf of the applicant, gave evidence. He gave evidence of his observations on two occasions in February and March 2013. He noted that no queue formed outside the venue, nor did he note any noise from the premises. He noted that there was no display of any sign which showed anything of a sexual nature. He observed that the majority of people left the premises by taxi and did not display signs of excessive intoxication. He noted there was a low level of visible routine police patrolling of Grove Street which he said indicated that these premises and this area are not perceived to be a hot spot for crime and disorder by the police. He did note that children had been seen in the area prior up to 21.26 on one of his observations but not after the premises were open. The venue is not overlooked by any schools, residential properties and places of worship. He noted that the footfall in Grove Street is low after 21.30. On the one evening observation he had undertaken 88 people had walked down Grove Street from 21.30 to 04.00 and he confirmed the majority of them had been men.

The Sub-Committee were given assurance that there were no 15 and 16 year olds in the premises. Younger clientele are not encouraged and a Challenge 25 policy is in operation, which applied to entry and serving drinks. It was accepted by the Applicant that the website may not be enhancing the reputation of the ST Lounge. The "shots for a pound" offer had been removed from the website, but had inadvertently remained on one page. Mr Knowles gave evidence that an A-Board is put out when the premises is open and it contains the outline of a woman, which does not breach any of the licence conditions. He confirmed that every person who comes in to the premises is given a leaflet to ensure they are aware of the rules and to make sure people are aware of what happens on the premises.

A 13 year old school boy gave evidence, as an objector that the premises make him feel uncomfortable walking across Wilmslow after school. During Saturday mornings he confirmed he had seen an A Board with the silhouette of a naked woman on it. He confirmed that he has to walk home from matches, weekly in the summer, when the ST Lounge is open. He also mentioned that the presence of door staff made him feel uncomfortable.

The following points were made on behalf of some objectors:

- One resident indicated that at 4am particularly in the summer there is noise from people walking in the area, which he believes have come from the ST Lounge.

- That the issue of a licence a year ago is not binding on this Sub-Committee because residents did not know of the change in the law at that time and had not picked up the advert over the Christmas period
- Grove Street is a main pedestrian thoroughfare and it is vital that everyone should feel comfortable walking past at all times. It links schools, churches and shops
- A resident had been given a card advertising the activities at the premises
- There are many residential properties within a short distance of the premises
- The premises are situated near churches and schools
- The premises put off new businesses from starting up in Wilmslow.
- Grove Street is essentially a shopping street and there is no commonality with the ST Lounge which is only open at night. The activity is inappropriate for a shopping street like Grove Street
- Allegations of contraventions of the conditions have been made
- Concern about the inconsistency of answers from the applicants
- The applicant's website has been giving misinformation
- The weight of objection should be taken into account by the Sub-Committee
- The location does raise the fear of crime and the fact that there are not many people around does cause fear since it is a no go area where people feel uncomfortable
- In a family shopping environment it is not in the right place since the shutters are down in the day and in the evening people are trying to avoid the area or accompanying their youngsters
- Proliferation concerns were an issue

The Sub-Committee were told that Make Wilmslow Matter is a loose organisation of residents who oppose the application. They submitted that the grant and the renewal of a licence are subject to the same requirements so that the Sub-Committee is entitled to have a fresh look at the licence. The locality does not need to change to make a different decision. The numbers of objectors has increased. Residents live nearby and there is a church within 100 yards and the council's policy says that it will not grant in areas of sensitive uses.

Make Wilmslow Matter firstly submitted that the Sub-Committee should determine that the appropriate number of sexual entertainment venues for the locality of

Wilmslow Town Centre is nil. This contention was put forward on the basis of the competing and sensitive uses i.e. surrounding schools, residential accommodation, shopping, places-of-worship and leisure facilities. It is sandwiched in between all these competing uses. The objectors had submitted a map to show all the competing uses in the surrounding area. The objectors also put forward the following contention: that the grant of the licence would be inappropriate due to the characteristics of the locality and to the uses to which premises in the vicinity are put. Reference was made by objectors to the application of paragraph 3.8 of the Council's policy:

"Whilst each application will be determined on its own individual merits the grant of a licence will generally be considered inappropriate where the characteristics of the locality include the following sensitive uses:

- (a) An area predominantly comprising residential accommodation*
- (b) Parks and children's play areas*
- (c) Schools and youth centres*
- (d) Places of worship; and*
- (e) Community facilities"*

The Sheptonhurst case was referred to for the contention that the sub-committee needs to acknowledge that a licence has been granted previously, but that a committee which granted a licence one year can make a different decision a year later. The Committee are entitled to have a fresh look at the matter and it must give its reasons for refusal.

An organiser of Make Wilmslow Matter, who lives nearby gave evidence. She referred to plans identifying 100 metre and 200 metres radius from the premises. She contended that Grove Street is an upmarket pedestrianised shopping area. The premises are surrounded by residential areas and Grove Street is a hub for that. Residents now feel uncomfortable going through the area after dark. She gave evidence of elderly accommodation within walking distance. She pointed out the cricket field adjacent to the Leisure Centre which is within the 1-200 metres radius. Wilmslow Prep and Wilmslow High Schools have objected. They have evening activities, as does the Leisure Centre.

The proximity of churches, including St Teresa's, St Bartholomew's and the Methodist Church and the URC church was highlighted and it was suggested that the location of the premises was inappropriate as a result. These facilities are used at all times of the day. Young people do congregate outside the Leisure Centre, Subway, Tescos and Pizza Express, within the locality. Young people also skateboard in the area. There are various restaurants and fish and chip shops and

Blockbusters which young people frequent. She indicated that she felt uncomfortable walking down the road when there might be a stag group in the area.

She gave evidence that the locality of the area is our local little high street and the locality of Wilmslow is around this pedestrianised shopping street frequented by families.

A person whose sister is a local resident gave evidence that her sister goes to the theatre by train and the premises have impacted on her a lot when coming home from the station late at night. She now takes a taxi, since she feels unable to walk via Grove Street.

A mother of two older teenage daughters gave evidence of her concern when her daughters are in Wilmslow in the evening. They do not want to use the bank ATMs on Grove Street after 22.00 and she feels she has to pick them up so they do not have to walk home. She confirmed that as a lone female she does not walk down Grove Street in the evening.

A local resident gave evidence that around 12 months ago (he agreed that he could not be precise about the date) he was given a publicity flyer outside ST lounge and there is sometimes noise and disturbance from people coming down Hawthorn Lane at 4am

Excerpts were read out from the submitted letters. The point was made that people are choosing to divert because the premises is on Grove Street and it was questioned why they should feel they have to do so. It was clear from Mr Butterworth's statement that the majority of people walking down Grove Street in the evening are men.

The Sub-Committee was mindful of the provisions of paragraph 4.19 of the Home Office Guidance, namely that when considering an application for a sexual entertainment venue licence made by an existing operator, local authorities must take into account any rights the existing operator may have under Article 1, Protocol 1 of the European Convention on Human Rights (which entitles every person to the peaceful enjoyment of their possessions) and Article 10 (freedom of expression). It was further noted that paragraph 4.21 of the Guidance recommends that local authorities consider whether any interference with the applicant's rights under Article 10, or Article 1, Protocol 1 of the ECHR is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, or, in the case of Article 1, Protocol 1, can be justified in the general interest.

The Sub-Committee noted that the Police had made no representations.

The Sub-Committee were mindful that the majority of the objections centred on the character of the area and the uses to which premises in the areas are put, in particular reference was made to the school on Grove Avenue, 4 local churches and

to the fact that Grove Street is a shopping Street often frequented by families, whilst the adjoining streets contain residential accommodation. The Sub-Committee was mindful of its policy in relation to the licensing of sexual entertainment venues and noted paragraph 3.8 of the policy

In making its decision, the Sub-Committee was mindful that it may not apply its policy in such a way as to fetter its discretion and that each application must be considered on its own merits. The Sub-Committee was also aware that (as in paragraph 3.23 of the Home Office Guidance) objections should not be based on moral grounds/values and that its decision should not be based on such grounds.

The Sub-Committee considered the case of R v Birmingham City Council ex parte Sheptonhurst Limited and noted the conclusion of Lord Justice O'Connor:

"In a case where there has been no change of circumstances, if the licensing authority refuses to renew on the ground that it would be appropriate having regard to the character of the relevant locality, it must give its reasons for refusal; If their reasons given are rational, that is to say properly relevant to the ground for refusal, then the court cannot interfere. I believe this to be the true protection for a licence holder applying for renewal against a wayward and irrational exercise of discretion. The fact that in previous years the licensing authority did not choose to invoke those reasons for refusing to grant or renew the licence does not make the reasons irrational.

The Sub-Committee considered the extent of the 'relevant locality' in respect of this particular premises and determined that the 'relevant locality' is a radius of 150 metres from the premises, since this covers the area centred on the pedestrianised shopping area in Wilmslow Centre.

The Sub-Committee further addressed the character of the relevant locality and the use to which premises in the vicinity are put. It noted that the locality is predominantly a mixed shopping and commercial area, with a number of residential properties within the relevant locality. St Teresa's Church is the nearest place of worship within the relevant locality. There is one school in Grove Avenue within the relevant locality. The Sub-Committee noted that within the vicinity of the premises there is a Leisure Centre, three further churches and one further school. The evidence was that many of these have evening activities to and from which people walk, taking routes which pass through Grove Street.

The Sub-Committee took into consideration the fact that the applicant had held a sexual entertainment venue licence for a year and a premises licence prior to that. It also gave careful consideration to the character of the relevant locality and to the use to which premises are put in the vicinity and determined that the renewal of the licence would be inappropriate.

Having taken into consideration:

- The provisions of Schedule 3 of the 1982 Act
- Home Office Guidance relating to sexual entertainment venues
- Cheshire East Borough Council's policy on the licensing of sexual entertainment venues and
- All the evidence presented to the Sub-Committee, including the submissions of each of the parties to the hearing and the written objections within the report and the late representations
- The case law referred to

The decision of the Sub-Committee was:

- 1. The relevant locality for the purposes of this application is 150 metres radius of the Premises**
- 2. To refuse the application for a renewal of a twelve month sexual entertainment venue licence on the ground that it would be inappropriate having regard (i) to the character of the relevant locality and (ii) the use to which any premises in the vicinity are put**

for the following reasons:

- **The relevant locality includes a quality shopping and commercial area, including the pedestrianised Grove Street which is used by a wide range of people including children and young people, families and older people as well as a significant number of residential properties in streets adjacent to Grove Street. The relevant locality also includes St Teresa's Catholic Church and Wilmslow Prep School**
- **Within the vicinity there are further sensitive premises, which include residential premises, Wilmslow High School, The Leisure Centre, St Bartholomew's Church, Wilmslow Methodist Church and the United Reformed Church**
- **The change that has taken place during the last twelve months is that ST Lounge is more prominent due to the adverse publicity it has received and as a result people have changed their attitudes and habits and are now tending to avoid walking past it, particularly in the evening when they felt uncomfortable. Evidence was also accepted that they felt uncomfortable in the daytime. The public concern had become more widespread during the last 12 months**
- **An example of the community concern is the objection from Wilmslow Town Council which unanimously made a recommendation to Cheshire East Council that the appropriate number of sexual**

entertainment venues in this locality should be nil, although Cheshire East Council had not given consideration to such a restriction

- **The objections received from a 13 year old and the mother of a 15 year old showed that concerns arose from a wide age range in the community**
- **The matters which added to the raised awareness and which raised community concern included the following:**
 - **An A-Board with an ambiguous image on it, left outside when the premises are closed**
 - **“House rules” flyers found on the pavement outside**
 - **The website linked to the club**
 - **The promotion of ST Lounge outside Wilmslow conflicts with the promotion of Wilmslow as a quality shopping destination**
- **Many of the sensitive premises in the vicinity hold evening activities and people, including young people, who live in Grove Avenue and in nearby roads must walk through the pedestrianised Grove Street and past ST Lounge to attend any activity at the Leisure Centre or either St Teresa’s or St Bartholomew’s Churches. The alternatives are a much longer walking route or a car journey.**

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CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Friday, 3rd May, 2013 at West Committee Room - Municipal
Buildings, Earle Street, Crewe, CW1 2BJ

PRESENT

Councillor P Whiteley (Chairman)

Councillors D Bebbington, W S Davies, L Smetham and J Wray

OFFICERS IN ATTENDANCE

Nikki Cadman, Licensing Officer

Fiona Crane, Lawyer

Vilma Robson, Senior Licensing Officer

Julie Zientek, Democratic Services Officer

88 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

89 APOLOGIES FOR ABSENCE

There were no apologies for absence.

90 DECLARATIONS OF INTEREST

There were no declarations of interest.

91 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.

92 12-13/44 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder attended the hearing and made representations.

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

RESOLVED

- (a) That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.
- (b) That a formal warning be issued in respect of the Licence Holder's future conduct.
- (c) That the application for renewal of this licence be referred to a meeting of the General Licensing Sub-Committee for consideration, to enable the Licence Holder to demonstrate that they continue to be a fit and proper person to hold a licence.

The Licence Holder was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

93 12-13/45 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant and a representative of the applicant attended the hearing and made representations.

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

RESOLVED

- (a) That the applicant remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that the application to renew the licence be granted.

- (b) That a formal warning be issued in respect of the applicant's future conduct.

The applicant was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

94 12-13/46 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

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

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant was not in attendance at the hearing.

Following the Licensing Officer's introduction of the case, and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all the evidence, including a letter submitted by the applicant, the following course of action had been agreed.

RESOLVED – That the applicant is not a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence, and that the application to renew the licence be refused.

The Sub-Committee noted that the applicant would be reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

95 12-13/47 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder and two representatives of the licence holder attended the hearing and made representations.

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

RESOLVED – That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.

96 12-13/48 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER 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 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 all the evidence, 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, and that the application for a licence be refused.

The applicant was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

The meeting commenced at 10.00 am and concluded at 2.10 pm

Councillor P Whiteley (Chairman)

CHESHIRE EAST COUNCIL

Minutes of a meeting of the **General Licensing Sub-Committee**
held on Wednesday, 8th May, 2013 at Committee Suite 2/3 - Westfields,
Middlewich Road, Sandbach, CW11 1HZ

PRESENT

Councillor P Whiteley (Chairman)

Councillors Rhoda Bailey, D Bebbington, W S Davies and I Faseyi

OFFICERS IN ATTENDANCE

Fiona Crane, Lawyer

Kim Evans, Licensing Team Leader

Jim Hopper, Licensing Officer

Julie Zientek, Democratic Services Officer

97 APPOINTMENT OF CHAIRMAN

RESOLVED – That Councillor P Whiteley be appointed Chairman.

98 APOLOGIES FOR ABSENCE

There were no apologies for absence.

99 DECLARATIONS OF INTEREST

There were no declarations of interest.

100 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.

101 12-13/50 CONSIDERATION OF APPLICATION FOR RENEWAL OF A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE

The Sub-Committee considered a report regarding an application to renew a Joint Hackney Carriage/Private Hire Driver's Licence. At a meeting of the General Licensing Sub-Committee on 1 March 2013, consideration of this matter had been deferred, to allow the applicant to attend the meeting.

The Sub-Committee was informed that the matter 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 applicant remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant attended the hearing and made representations.

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

RESOLVED – That the applicant is not a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence, and that the application to renew the licence be refused.

The applicant was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

102 **12-13/49 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE**

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder attended the hearing and made representations.

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

RESOLVED – That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.

103 **12-13/52 CONSIDERATION OF FITNESS TO HOLD A JOINT HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCE**

The Sub-Committee considered a report regarding the holder of a Joint Hackney Carriage/Private Hire Driver's Licence.

The Sub-Committee was informed that the matter 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 licence holder remained a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The licence holder attended the hearing and made representations.

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

RESOLVED

- (a) That the Licence Holder remains a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence and that no formal action be taken in relation to the future of their licence.
- (b) That a formal warning be issued in respect of the Licence Holder's future conduct.

The Licence Holder was reminded of the right to appeal this decision to the Magistrates' Court within 21 days.

104 **12-13/51 APPLICATION FOR A JOINT HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE**

Note: Councillor Faseyi left the meeting prior to consideration of this item.

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 matter 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 applicant was a fit and proper person to hold a Joint Hackney Carriage/Private Hire Driver Licence.

The applicant was not in attendance at the hearing and the Sub-Committee resolved to determine the application in their absence.

Following the Licensing Officer's introduction of the case, and in accordance with the rules of procedure, the Chairman of the Sub-Committee reported that, after taking account of all the evidence, 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, and that the application for a licence be refused.

The Sub-Committee noted that the applicant would be reminded of the right to appeal this decision to the Magistrates Court within 21 days.

The meeting commenced at 10.00 am and concluded at 3.00 pm

Councillor P Whiteley (Chairman)

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CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 23rd May 2013
Report of: Mrs Vilma Robson – Senior Licensing Officer
Subject/Title: Draft Charitable Collection Policy
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services
Portfolio Holder

1.0 Report Summary

1.1 This report seeks Members' approval on a draft policy concerning the Charitable Collections.

2.0 Recommendation

2.1 That Members consider the content of the draft policy and authorise the Licensing Team Leader to undertake consultation.

3.0 Reasons for Recommendations

3.1 The Council does not currently have a Borough wide Charitable Collections Policy. All applications are therefore processed in accordance with the policy or working practise applicable in each of the former Boroughs.

4.0 Wards Affected

4.1 All

5.0 Local Ward Members

5.1 All

6.0 Policy Implications

6.1 None

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 None identified

8.0 Legal Implications (Authorised by the Interim Monitoring Officer/Head of Legal Services)

8.1 The Licensing Authority authorises collections made in 'any street or public place' for 'charitable or other purposes' in accordance with Section 5 of the Police, Factories, and & c. (Miscellaneous Provisions) Act 1916.

8.2 House to House collections are controlled by the House to House Collections Act 1939 and the House to House Collections Regulations 1947, as amended.

9.0 Risk Management

9.1 Full consideration of the policy and any objections received in response to the consultation would mitigate the risk of challenge to any decision taken.

10.0 Background and Options

10.1 A draft policy has been compiled by Officers, having regard to the procedures and working practice currently used in each of the former Boroughs. The draft policy is attached at appendix A

10.2 The purpose of controlling charitable collections is to provide appropriate controls and ensure that:

- A locality is not saturated with collectors
- The presence of any collector does not cause a nuisance or annoyance to the public
- To provide consistency and ensure fairness to applicants
- Achieving a fair balance between local and national causes

10.3 It is intended that any consultation on the draft Policy would be conducted over a 6 week period via publication on the Council's website.

11.0 Access to Information

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

Draft Charitable Collections Policy – Appendix A

Name: Mrs Vilma Robson

Designation: Senior Licensing Officer

Tel No: 0300 123 5015

Email: vilma.robson@cheshireeast.gov.uk



Charitable Collections Policy

Contents

1. Introduction
2. Policy Objectives
3. Street Collections
4. Street Collection Applications
5. House to House Collections
6. House to House Collection Applications
7. Sharing Information
8. Standards
9. Enforcement
10. Decisions
11. Review of the Policy
12. Appeals
13. Fee Structure
14. Contacts

- 1.1 Cheshire East Council regulates charitable collections in the street and also house to house collections. Some matters relating to these collections are at the discretion of the Council and it is important that the Council has a policy regarding these matters.

2 Policy Objectives

- 2.1 This policy is designed to ensure that:
- Applications are made in a timely way, neither too early nor too late
 - Ensuring impartiality and fairness in determining applications
 - Accommodating all eligible requests, subject to capacity, and bearing in mind that certain days and locations are especially sought after
 - Providing equality of opportunity for perspective collectors
 - To avoid causing nuisance to the public
 - Setting fair maximum limits for one applicant
 - Achieving a fair balance between local and national causes

3 Street Collections

- 3.1 The Licensing Authority licenses collections made in 'any street or public place' for 'charitable or other purposes' in accordance with Section 5 of the Police, Factories, and & c. (Miscellaneous Provisions) Act 1916.
- 3.2 'Street' is defined as including any highway and any public bridge, road, lane, footway, square, court, alley or passage whether a thoroughfare or not.
- 3.3 A 'public place' is defined as places where public have access and will include shopping centres and the entranceways to shops. The foyer of a supermarket could be considered to be behind closed doors therefore would only require the consent of the manager, however if the collection also took place outside or in the car park, a licence would be required.
- 3.4 Permit holders are not restricted to the collection of money only - they can also sell articles on behalf of a charity.
- 3.5 To support the control of street collections taking place the Council has passed regulations and these are shown at Appendix A. Failure to comply with these regulations can render a person liable on summary conviction to a fine not exceeding £200.00.

4 Street Collection Applications

- 4.1 There must be a minimum of 28 days notice given between the application and the proposed date of collection. This requirement may be waived in exceptional circumstances at the discretion of the Licensing Team Leader. For example where a major charitable need has suddenly arisen, which could

not have been foreseen and that requires urgent assistance eg natural disaster relief aid.

- 4.2 Where the collection is to take place in a shopping centre, retail park or private land, written permission from the centre/site manager or land owner must be sent with the application. An application received without such permission will be deemed incomplete and rejected.
- 4.3 If the collection is to be held within a Town Centre, the Licensing Team may consult with the relevant Town Centre Manager before considering the application.
- 4.4 Tacit approval applies to this type of application when made via the Government's online portal. This means that an applicant will be able to act as though the application has been granted if they have not heard from the Licensing Authority by the end of the target completion period of 21 days.
- 4.5 Which organisation is granted a permit will be determined on a first come first served basis, although preference will be given to local charities or charities with a local connection. Exceptions to this will be for the following national charities whose collections are linked to specific dates in the year and to whom preference will be given eg Children in Need, Royal British Legion and Christian Aid Week.
- 4.6 Applications for permits or waivers will not be considered more than twelve months in advance of the proposed start date of the collection.
- 4.7 Whilst the Council does not place a specific limit on the number of collections a particular charity may apply for in a calendar year, applications will be monitored. If Officers form the opinion that an excessive number of collection permits are being applied for by one charity, this charity's applications may be referred to the General Licensing Sub-Committee. The Sub-Committee may place a restriction on the number of permits that may be granted to this charity.
- 4.8 Street Collections will generally only be permitted within town centres, retail parks or retail unit car parks. Other roads or private land may be considered for the granting of a collection permit, but this will be on the merits of the application and the nature and locality where the collection will be undertaken.
- 4.9 A maximum of two charities shall be allowed to collect within any one locality on any one day. The locality will be determined by the Licensing Officer having regard to each application. Where an applicant seeks a permit to cover multiple locations with several collectors, the Licensing Authority may limit the number of permits to one.
- 4.10 Permits to collect will only be granted for periods not exceeding seven consecutive days with a period of seven clear days between permits. This requirement may be waived in exceptional circumstances at the discretion of the Licensing Team Leader.

- 4.11 At the discretion of the Licensing Team Leader, permits may be limited to such streets or public places or such parts thereof as is considered appropriate.
- 4.12 Applications to collect to raise funds for the purpose of financing personal expeditions will not be permitted, even where a proportion of the funds raised are donated to charity.
- 4.13 The Council's Regulations makes allowance for the Regulations to be departed from in some case under specified circumstances. Any request to depart from the Regulations shall be made in writing to the Licensing Team.
- 4.14 Moving collections such as carnival processions and other similar events which involve collecting from the public along a route will require a Street Collection Permit.
- 4.15 The applicant must forward a financial return form to the Licensing Authority within one month of the date of collection showing details of the monies collected. No further permits will be issued to any applicant that has failed to forward the financial return form in respect of previous collections.
- 4.16 Where an application for a permit is refused by an Officer, the applicant will have a right of appeal to the Council's General Licensing Sub-Committee.

5 House to House Collections

- 5.1 House to House collections are controlled by the House to House Collections Act 1939 and the House to House Collections Regulations 1947, as amended.
- 5.2 As a general rule, house to house collections for charitable, benevolent or philanthropic purposes, whether or not the purpose is charitable within the meaning of the rule of law are required to be licensed by the authority.
- 5.3 The definition of 'collection' extends beyond requests for money, to include the sale of magazines, requests for unwanted clothing and household items, visits to persuade persons to buy goods etc, where any part of the proceeds may go to charity.
- 5.4 A collection for a charitable purpose cannot be made unless the provisions of the Act and the Regulations are complied with, otherwise an offence may be committed. If any person or organisation promotes a charitable collection then they must have a licence to do so.
- 5.5 Anyone acting as a collector where there is not a licensed promoter also commits a criminal offence. Offences are punishable by penalties ranging from a fine of up to £200.00 or in some cases up to six months imprisonment and a fine of up to £1,000.
- 5.6 The only exception to the general rule is organisations that have been granted an Exemption Certificate by the Cabinet Office under the provisions of the House to House Collections Act 1939. This Certificate allows an organisation to collect in an area without applying for a licence. The organisation must

inform the Licensing Authority of the dates and areas of any planned collections. Details of exempted organisations can be found on the Cabinet website.

6 House to House Collection Applications

- 6.1 An application for a house to house collection licence shall be made not later than the first day of the month preceding that in which it is proposed to commence the collection. This requirement may be waived in exceptional circumstances by the Licensing Team Leader.
- 6.2 The following information must be submitted with the application:
- Literature about the organisation
 - Copy of the published accounts for the collecting organisation for the previous financial year
 - If the applicant is not an official of the organisation, a letter from the charitable organisation authorising the applicant to undertake a collection on their behalf
 - Any agreement or contract details with the registered charity or individual benefiting from the collection
- 6.3 If further information is requested from the applicant to assist in the determining of the application, this must be provided in a timely fashion. Failure to do so will result in a delay to consideration, or refusal of the application.
- 6.4 Tacit approval applies to this type of application when made through the Government's online portal. This means that an applicant will be able to act as though the application has been granted if they have not heard from the licensing authority by the end of the target completion period of 21 days.
- 6.5 Charities must be registered with the Charity Commission or a charitable organisation based in/around Cheshire East.
- 6.6 Wherever possible, no more than one organisation will be permitted to collect in the same area on the same day. Applications will be dealt with on a first come first served basis.
- 6.7 In general, organisations will not be permitted to hold more than two collections throughout the Borough or part thereof during one calendar year.
- 6.8 To avoid the prospect of multiple collections being made in any one day, the Council will not grant licences for a period of twelve months. To give sufficient time to undertake a collection, it will be the policy of the Council not to grant licences for periods in excess of 14 days unless the Licensing Team Leader is satisfied that exceptional circumstances exist.
- 6.9 The applicant must forward a financial return form to the Licensing Authority within one month of the date of collection showing details of the monies collected. No licence will be issued to any applicant that has failed to forward the financial return form in respect of previous collections.

- 6.10 If the application indicates the organisation has been refused a licence to carry out a house to house collection by another Local Authority, unless there are special circumstances for the refusal, the application will normally be refused.
- 6.11 If an organisation is found to have carried out unlicensed collections, no licences will be granted to that organisation until a period of at least three years has passed without further contraventions.
- 6.12 The Licensing Authority can refuse or revoke a licence for a number of reasons:
- If too high a proportion of the proceeds are to be spent on expenses
 - If not enough of the proceeds are to be given to the charity or cause
 - If incorrect information was provided on the application form
 - If the promoter or any other person involved in the collection has been convicted of certain criminal offences, eg burglary, blackmail or fraud
 - If the grant of the licence would be likely to facilitate the commission of an offence under section 3 of the Vagrancy Act 1824
 - If the applicant or holder of the licence has failed to exercise due diligence to ensure that the collectors are fit and proper, to ensure compliance with the provisions of the House to House regulations or to prevent prescribed badges or certificates of authority being obtained other than by authorised persons

In relation to the above reasons for refusal or revocation of permission, the following additional notes are included for guidance:

6.13 Amount devoted to charity

- 6.13.1 The grounds of refusal by the Licensing Authority, as set out in the 1939 Act, of an application for a licence include where the total amount likely to be applied for charitable purposes as a result of the collection is inadequate in proportion to the value of the proceeds likely to be received (including any proceeds already received). For the purposes of assessing this, the Council will consider each application on its merits. In particular the Council recognises that cost of collection of goods such as textiles by a commercial operator in partnership with a charity can vary. For this reason the Council will not apply fixed minimum percentages of the total value of goods collected to be applied to charitable purposes.
- 6.13.2 In order to assess the level of proceeds going to charitable purposes consideration will be given to:
- The costs involved with making the collection (eg transport / materials / remuneration)
 - The revenue generated from the goods collected
 - The level of proceeds from the collection that will be donated to the nominated charity
 - The annual accounts submitted in terms the general performance of the collecting organisation in relation to points (a) – (c) above

6.14 Fit and proper person

6.14.1 The grounds of refusal include where the applicant is not a fit and proper person by virtue of having been convicted of certain offences. The general policy of the Council will be that anyone convicted of one of the specified offences shall not be granted a licence or shall have their licence revoked. The specified offences are:

- Offences under sections forty-seven to fifty-six of the Offences against the Person Act 1861 (robbery, burglary, and blackmail)
- Offences in Scotland involving personal violence or lewd, indecent, or libidinous conduct, or dishonest appropriation of property
- Offences under the Street Collections Regulation (Scotland) Act 1915
- Offences under section five of the Police, Factories Etc. (Miscellaneous Provisions) Act 1916
- Any offence which necessarily involved a finding that the applicant acted fraudulently or dishonestly

6.15 Exercising due diligence

6.15.1 Where the applicant for or the holder of a licence fails to exercise due diligence in ensuring that collectors authorised by him were or are fit and proper persons, then the Council may refuse to grant the licence or may revoke the licence. It is the policy of this Council that, where the Council is satisfied that due care or diligence has not been exercised, a licence will be refused or revoked.

6.16 Additional information

6.16.1 Where the applicant or the holder of a licence refuses or neglects to provide the Council with such information as the Council reasonably requires, then the Council will normally refuse the application.

6.17 Where an application for a permit is refused by an Officer, the applicant will have a right of appeal to the Council's General Licensing Sub-Committee.

7 Sharing Information

7.1 The Council will share with other enforcement bodies information supplied by applicants, or acquired in the course of exercising licensing functions, where it is lawful to do so. In particular, personal information will only be disclosed in accordance with the Data Protection Act 1998. This may include requests from the Audit Commission or other regulatory agencies where this is necessary for the detection or prevention of crime or required by law or in connection with legal proceedings.

8 Standards

8.1 The Licensing Authority recommends that all organisations adhere to the Institute of Fundraising's Code of Fundraising Practice. A copy of this code of practice can be found at www.institute-of-fundraising.org.uk

- 8.2 The Code of Charity Retailing promotes good practice and high standards for charity retailing. Compliance with the Code is a mandatory part of membership of the Association for UK charity members. A copy of this code of practice can be found at <http://www.charityretail.org.uk/ccr2011.pdf>
- 8.3 The Licensing Authority acknowledges that collections of direct debit details in the street are not regulated by the 1916 Act. However, such collectors are advised to consider the advice provided by the Public Fundraising Regulatory Association. This can be found at www.pfra.org.uk.
- 8.4 Similarly, the Licensing Authority determines that collections of direct debit details house to house are outside the scope of the 1939 Act. However, such collectors are again advised to consider the advice provided by the Public Fundraising Regulatory Association.

9 Enforcement

- 9.1 It is recognised that well directed enforcement activity by the Council benefits not only the public but also responsible collectors.
- 9.2 The Council will operate a proportionate enforcement regime in accordance with the Council's relevant enforcement policies.
- 9.3 The general enforcement aims of the Licensing Authority are to:
- Safeguard the interests of both public donors and beneficiaries
 - Facilitate well organised collections by bona fide charitable institutions and to ensure that good standards are met
 - Prevent unlicensed collections from taking place

10 Decisions

- 10.1 In exercising its discretion in carrying out its regulatory functions, Cheshire East Council will have regard to this Policy document and the principles set out therein.
- 10.2 Notwithstanding the existence of this Policy, each application will be considered on its own merits based on the licensing principles detailed in this Policy.
- 10.3 Where it is necessary for the Council to depart substantially from this Policy, clear and compelling reasons for doing so must be given. The Licensing Team Leader may authorise a departure from the policy in accordance with this section if he/she considers it necessary in the specific circumstances.

11 Review of the Policy

- 11.1 This Policy will be reviewed every five years. As well as the five-yearly reviews, the policy will continue to be evaluated and may be updated at any time. Any changes to this policy must be agreed by the Licensing and Regulation Committee, unless this function is delegated to an appropriate officer.

12 Appeals

12.1 Street Collections

12.1.1 There is no formal right of appeal against any decision made by the Council to grant or refuse an application for a street collection permit. However, in the interests of fairness if an organisation wishes to lodge a request for a decision to be reviewed then the matter should be put in writing to the Licensing Team Leader, and the matter will be brought before the next available General Licensing Sub-Committee for determination.

12.2 House to House Collections

12.2.1 There is a right of appeal to the Minister for the Cabinet Office against the decision of the Licensing Authority to refuse an organisation a licence to hold a house to house collection or to revoke such a licence.

12.2.2 Appeals should be made in writing to:
Office of the Civil Society,
2nd Floor, Admiralty Arch, South Side
The Mall
London
SW1A 2WH

12.2.3 An appeal must be lodged within 14 days of the date on which Notice of refusal or revocation was given to the applicant or licence holder.

13 Fee Structure

13.1 There is no power within the legislation to make a charge for the processing of Street Collection permits or House to House Collection licences.

14 Contacts

Licensing Team
Cheshire East Council
Town Hall
Macclesfield
SK10 1EA
☎ 0300 123 5015
✉ licensing@cheshireeast.gov.uk
🌐 www.cheshireeast.gov.uk/licensing

CHESHIRE EAST COUNCIL

REPORT TO: Licensing Committee

Date of Meeting: 23rd May 2013
Report of: Mr Bruce Kennerley – Licensing Officer
Subject/Title: Proposed changes to the joint Hackney Carriage and Private Hire Driver knowledge test
Portfolio Holder: Cllr Les Gilbert - Communities and Regulatory Services
Portfolio Holder

1.0 Report Summary

- 1.1 To seek Members' approval for changes to the testing requirements of applicants for joint Hackney Carriage and Private Hire Driver Licenses.

2.0 Recommendation

- 2.1 That Members consider the proposed changes, the results of the consultation and resolve:
- I. To continue the current practice in relation to the testing of applicants for joint Hackney Carriage and Private Hire Driver Licenses
 - or**
 - II. That all applications for the grant of a joint Hackney Carriage and Private Hire Driver Licenses received with effect from the 1st July 2013 must be accompanied by a Certificate confirming that the applicant has passed the BTEC Level 2 Certificate in the introduction to the role of the Professional Taxi and Private Hire Driver. Any application received prior to this date will be processed in accordance with existing requirements. The Licensing Team Leader is given delegated authority to agree and sign Service Level Agreements with the relevant colleges.

3.0 Reasons for Recommendations

- 3.1 The Licensing Committee has delegated authority to determine such matters.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

6.1 None

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

7.1 The cost of any course will be met by the applicant.

8.0 Legal Implications (Authorised by the Interim Monitoring Officer/Head of Legal Services)

8.1 Section 46 of the Town Police Clauses Act 1847 provides local authorities the power to issue Hackney Carriage driver's licences. Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the 1976 Act') provides the authority to issue licences to drive private hire vehicles.

8.2 The provisions of section 59 (1) (a) (in relation to hackney carriage drivers licences) and section 51 (1) (a) (in relation to private hire drivers licences) of the 1976 Act state that a council shall not grant a licence 'unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence'.

8.3 What constitutes fit and proper is not defined in the Town Police Clauses Act 1847 or the Local Government (Miscellaneous Provisions) Act 1976. Similarly, there is no judicially approved test of fitness and propriety.

8.4 To assist the Licensing Authority in determining whether an applicant is fit and proper a number of processes are conducted, namely:

- Completion of the Council's application form
- Satisfactory enhanced Disclosure and Barring Certificate (formerly CRB)
- Satisfactory driving record
- Medical assessment
- Knowledge test

9.0 Risk Management

9.1 Thorough consideration of all the information prior to making a decision will reduce any risk of a successful challenge.

10.0 Background

10.1 On the 5th November 2012 the Licensing Committee gave Officers the delegated authority to review, update and amend the driver knowledge test, including the consideration and implementation of an appropriate numeracy/language skills test.

10.2 Following that decision, the Licensing Team researched the testing arrangements of a number of Licensing Authorities across the country. This

research included our neighbours at Cheshire West and Chester, Stoke-on-Trent and colleagues at Manchester City Council.

- 10.3 It became evident that the testing arrangements in place within the Borough fell short of the standards required by other Licensing Authorities. This makes Cheshire East vulnerable to applicants from outside the Borough and who have failed the requirements of other Licensing Authorities.
- 10.4 This vulnerability is exacerbated by recent case law that allows a licensed vehicle to be used for pre-booked work throughout England and Wales. Members are aware that we have seen an increase in the number of applications being made by residents of North Manchester.
- 10.5 It was confirmed that many Licensing Authorities are requiring applicants for driver licenses to undergo a more formal testing process. This includes the attainment of a national accredited and recognised qualification.
- 10.6 Consequently, the Licensing Team researched the qualifications available and the following courses were identified:
1. The Btec Level 2 Certificate in the introduction to the role of the Professional Taxi and Private Hire Driver
 2. NVQ Certificate in Road Passenger Vehicle driving (Taxi and Private Hire Driver)
- 10.7 The main difference between the qualifications is that the first is designed for those who are new to the licensed trade and the second is designed for those who are already licensed drivers and therefore goes further into the knowledge needed to gain the qualification.
- 10.8 The Licensing Team made contact with Macclesfield College and South Cheshire College to establish whether they were able to provide either course. Both colleges have been of great help to the Licensing Team in researching the courses and have spent time establishing the potential for the courses to be run and synchronising the courses in such a short time period.
- 10.9 **Our current knowledge test**
- 10.9.1 The current requirement for applicants is to complete a single test paper comprising 3 parts:
- Part 1 Highway Code
12 multiple choice questions
Pass mark - 10/12
 - Part 2 Taxi legislation
25 multiple choice questions
Pass mark - 21/25
 - Part 3 Local Knowledge
6 written answer questions
Pass mark - 5/6

- Completion time – 45 minutes

10.9.2 If the applicant passes they receive notification by telephone and subject to their CRB and Medical Report being in order, are then issued with their badge and licence, which is valid for 3 years.

10.9.3 This enables them to drive either a Hackney Carriage Vehicle or Private Hire Vehicle in Cheshire East Council Zones Macclesfield, Congleton or Crewe. Applicants are able to take 3 tests on each application. Three failures will result in the application being closed, the current failure rate is 60%.

10.9.4 A Knowledge Pack is provided online or on request at The Customer Service Centres which give a very basic outline of test requirements. However, there is no coaching or indication in the pre-test Knowledge Pack as to what an applicant is expected to learn in preparation for the exam and this may result in the high failure rate on first exams.

10.10 The Btec Level 2 Certificate in the introduction to the role of the Professional Taxi and Private Hire Driver

10.10.1 The Btec Level 2 Certificate in the introduction to the role of the Professional Taxi and Private Hire Driver (the Btec qualification) goes further than the Council's own knowledge test. As well as being a qualification accredited by Edexcel, it will ensure a level of competence in the following units:

- **Unit 1:** To demonstrate an understanding of health and safety in the work environment of the taxi and private hire driver.
- **Unit 2:** To understand how to transport passengers safely and in relative comfort.
- **Unit 3:** To understand how to provide professional customer service in the taxi and private hire industries.
- **Unit 4:** To understand how to maintain a taxi or private hire vehicle to a legal standard for the safe transport of fare-paying passengers.
- **Unit 5:** To understand how to operate a hackney carriage or private hire vehicle within the regulatory framework pertaining to the licensing area in which they are licensed to transport passengers.
- **Unit 6:** To understand how to provide a transport service in the taxi and private hire industries for passengers who require assistance.
- **Unit 7:** To understand how to plan routes and charge fares in the taxi and private hire industry
- **Unit 8:** To understand how to transport parcels, luggage and other items in the taxi and private hire industries.
- **Unit 9:** To understand how to transport children and young persons whether directly or under a contract with a public organisation.

10.10.2 The qualification will cost approximately £235.00 to undertake, with this cost being met by the applicant. Both colleges will ensure consistency in their fees. There are funding streams available to applicants who are unemployed and details of this can be provided to the applicant by the relevant colleges.

10.10.3 As part of the qualification, a skills assessment will be undertaken by the colleges. This assessment is to ensure that the literacy and numeracy skills of the student are at a good enough standard for them to complete the qualification. If their skills fall short they will be offered support and training to reach the required standard.

10.10.4 The Btec qualification course teaches driver applicants all the skills they require and provides coaching and assistance. The assessors will also answer any queries and then test them to ensure they have retained the knowledge acquired. The qualification is assessed through an onscreen multiple choice question assessment and course work.

10.11 Between the 18th March 2013 and 29th April 2013 the Licensing Team conducted a consultation exercise with the licensed trade and more widely via the Council's web-site to ascertain views on the Council requiring applicants to have undertaken the Btec qualification. The consultation included a number of other proposed changes (six in total) and 24 responses were received, of these 15 respondents commented on the testing arrangements, the relevant comments are attached at Appendix A together with any comments from Officers.

10.12 If Members are minded to approve the proposed changes, it is intended that the following practices will also be employed:

- I. Where an applicant for the grant of a driver licence has gained the Btec qualification at another college where this Council's local questions have not been used, will be required to complete a separate test. This test will assess the applications geographical knowledge of the district applied for and the Council's own Byelaws and Conditions and will be conducted by Officers of the Council (the in-house test).
- II. Where an application for the grant of a driver licence has already gained the NVQ Certificate in Road Passenger Vehicle driving (Taxi and Private Hire Driver) there will be no requirement for them to undertake the Btec qualification. However, if the applicant has not previously been licensed by Cheshire East Council they will be required to complete the in-house test.

10.13 During the course of researching the changes to the testing arrangements, there are a number of further options that Members may wish to consider:

- Encouraging or requiring all licensed drivers to undertake the NVQ Certificate in Road Passenger Vehicle driving (Taxi and Private Hire Driver)
- It would be possible to conduct a physical assessment of an applicant's driving skills
- The physical driving assessment might also be used by the General Licensing Sub-Committee to confirm the driving skills of an existing

driver where a complaint or concern has being raised in relation to their driving skills

10.14 Members may wish to provide an indication to Officers as to whether they would like more information on the above points.

11.0 Access to Information

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

Name: Mr Bruce Kennerley

Designation: Licensing Officer

Tel No: 03001235015

Email: bruce.kennerley@cheshireeast.gov.uk

Consultation Responses

1. I have received your letter concerning the proposed changes. I have no comment on them.
2. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
3. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
4. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
5. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
6. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
7. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
8. Hackney Carriage and Private Hire Licensing Consultation – Thank you for your letter detailing Amendments numbered 4921 – 4926. I am in full agreement with them all.
9. 1110 BTEC Level 2 Certificate
I make these comments as a qualified NVQ assessor.
Whilst I firmly believe that the NVQ is a good thing it is still lacking in a couple of departments. The local map knowledge and the correct instruction to load, unload and secure a wheelchair is not present. These are most important in my opinion as a sat nav does not send you the shortest way and regarding wheelchairs health and safety. As taxi drivers and you as Cheshire East Council one of our aims surely is to encourage new businesses to the area and as taxi drivers we are often the first contact people have with the area. Because of this and our current customers I would like to make the following relevant points. Some of the new taxis being licensed are up to sixteen years old. Can we not implement a rule as they do in Stoke on Trent. In Stoke a new or replacement vehicle has got to be under two years of age and changed when the vehicle is eight years old for a saloon car or ten years for a wheelchair vehicle. You might not wish to be that strict but say a three, ten

and twelve year rule is implemented in the long term it could only be good for the area.

Officer Comments: Both Macclesfield College and South Cheshire College have committed to including the Council's own Conditions, Byelaws, and geographical questions into the qualification. Similarly, unit 6 provides information in relation to dealing with disabled passengers. Service Level Agreements will be agreed to maintain consistency and content of the course. Additionally, the Council will have the right to audit both courses.

10. Section 1434 BTEC Level 2 Certificate in Introduction to the Role of the Professional Taxi and Private Hire Driver

With respect to the above I have no issues providing that this would not vastly increase the New Driver Applicant fees and that they would be able to retake the course in the event of minor failure without additional expense to themselves.

Officer Comments: The cost of the Course will be £235.35, payable by the applicant directly to the colleges. Funding to cover the course will be available to unemployed candidates. Any failures or re-sits will be a matter for the candidate and the college. Members will be aware that the Licensing Authority must set its fees on a cost recovery basis. Whilst a reduction in fees may be appropriate, any surplus may also be used to provide additional resources in the Licensing Team. This might include additional officers or equipment. The issue of an appropriate fee for the grant of a licence will be review and will take into account the Authority's additional responsibilities in ensuring that the standard of training conducted by the colleges is appropriate.

11. Also if I may make a comment on the proposed NVQ to replace the in house Taxi driver Test. I think the in-house test is a little biased towards Crewe taxi drivers. Potential Taxi Drivers that are going to work in the Middlewich area should not have to know the topography of Crewe area to perform their role, so a more standard knowledge like the NVQ is welcomed by me as long as it isn't a full weeks course needed to be attended.

Officer Comments: The geographical knowledge questions are set for the relevant zone applied for. The duration of the course will be set by the colleges to fit in with their timetables and availability.

12. My final comment relates to knowledge tests. Many drivers starting now have no clue where they are going. Dropping the knowledge test will make this worse. A greater understanding of the area tested by people from the local area is needed. The btec is useful for new starters and contains valuable information. It should be used in conjunction with a local knowledge test. Seeing new starters say to customers that they don't know the way to the simplest location is embarrassing.

Officer comments: It is not intended that the Council will end the testing of applicants. Rather it is intended that the requirement for a national accredited qualification to be passed will increase the knowledge of applicants and

ensure that the licensed trade becomes a professional and creditable aspect of Cheshire East's transport provision. The colleges have undertaken to include local requirements into the qualification and the Licensing Team has undertaken to review, increase, and strengthen the geographical questions provided to the colleges.

13. Item 5988 you ask about the Btec level 2, yet a short while ago most taxi drivers took the NVQ Is this to be accepted for existing drivers or are we all to be put for Betc and at whos expense As I for would object strongly to having to give up yet more time from work to sit another course when your previous licensing enforcement officer advised us on this course and indeed Alison on my request attended with me to assess the course, and is there still to be the knowledge test as surely this is of great importance for any driver wishing to work in any zone.

Officer Comments: It is intended that the requirement to undertake the Btec qualification will be placed on applicants for the grant of a licence only. The requirement will not extend to exiting drivers. However, there may be instances where an existing licensed driver fails to renew a licence before its expiration. In these instances any application will be dealt with as though it were a grant application. The application will therefore be required to have completed the Btec qualification. Dispensation from this requirement will be given to those who have passed the similar NVQ Certificate in Road Passenger Vehicle driving (Taxi and Private Hire Driver) qualification.

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