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DONCASTER METROPOLITAN BOROUGH COUNCIL

LICENSING COMMITTEE

TUESDAY, 28TH JUNE, 2016

A MEETING of the LICENSING COMMITTEE was held at the COUNCIL CHAMBER, CIVIC OFFICE on TUESDAY, 28TH JUNE, 2016, at 10.00 am.

PRESENT:

Chair - Councillor Ken Keegan

Councillors Iris Beech, Bev Chapman, Steve Cox, Neil Gethin, Charlie Hogarth, Majid Khan, John McHale and Clive Stone.

APOLOGIES:

Apologies for absence were received from Councillors Linda Curran, Elsie Butler, James Hart and Sue McGuinness.

1 DECLARATIONS OF INTEREST, IF ANY

In accordance with the Members' Code of Conduct, Councillor Majid Khan declared a Disclosable Pecuniary Interest in agenda item 7, 'Hackney Carriage and Private Hire Licensing Policy – Appendix 10 Private Hire Operator – Conditions of Licence' and agenda item 8, 'Hackney Carriage and Private Hire Licensing Policy, Hackney Carriage Driver, Private Hire Driver and Private Hire Operator Licensing – Safeguarding Awareness Training', by virtue of being a taxi licence holder and vacated the room during consideration thereof.

Councillor Steve Cox declared a Disclosable Pecuniary Interest in agenda item 7, 'Hackney Carriage and Private Hire Licensing Policy – Appendix 10 Private Hire Operator – Conditions of Licence' and agenda item 8, 'Hackney Carriage and Private Hire Licensing Policy, Hackney Carriage Driver, Private Hire Driver and Private Hire Operator Licensing – Safeguarding Awareness Training', by virtue of being a taxi licence holder and a taxi driver and vacated the room during consideration thereof.

2 MINUTES OF THE LICENSING COMMITTEE MEETING HELD ON 17TH MARCH, 2016

RESOLVED that the minutes of the Licensing Committee meeting held on 17th March, 2016, be approved, subject to Councillor Steve Cox's attendance being recorded for part of the meeting.

3 TERMS OF REFERENCE, PROCEDURES AND DELEGATIONS

The Committee considered a report which set out the Terms of Reference for the discharge of Licensing functions and the procedure for Licensing Hearings, as detailed within Appendices A, B1, and B2, respectively.

Members were also asked to agree the delegation of functions to Licensing Sub-Committees and the appointment of Members of Licensing Sub-Committees, as set out within Appendices C1, C2 and D.

RESOLVED that

- (1) the Terms of Reference for the Licensing Committee, as detailed in Appendix A to the report, be noted;
- (2) the Terms of Reference for the Licensing Sub-Committees, as detailed in Appendix A to the report, be noted;
- (3) the procedures set out in Appendices B1 and B2 to the report, continue to be the procedures for Licensing Committee and Licensing Sub-Committee hearings held under the Licensing Act 2003, and the Gambling Act 2005, respectively;
- (4) the procedure for dealing with settling appeals after the Licensing Sub-Committee hearing, but before the appeal hearing in the Magistrates' Court is decided; be approved
- (5) the delegation of functions, as set out in Appendix C1 and C2 to the report, be approved; and
- (6) the appointment of Members to the Licensing Sub-Committee, as set out in Appendix D to the report, be approved.

4 LICENSING ACT 2003, GAMBLING ACT 2005 AND GENERAL LICENSING UPDATE

The Business Safety and Licensing Manager presented a report which updated Members on issues relating to the Licensing Act 2003, the Gambling Act 2005 and any significant licensing enforcement actions. Further to a request from the Committee at previous meetings, Members were provided with statistical details of the licensing decisions (Licensing Act 2003 and Gambling Act 2005), that were delegated outside the remit of the Committee and Sub-Committee, at least annually at the inaugural meeting, together with a summary of the significant enforcement actions taken by the Business Safety and Licensing Service within the last twelve months.

Members' attention was drawn to the licensing enforcement actions in Appendix A2 of the report, in particular to the significant number of licensed taxi/private hire vehicles that had been suspended from service during the past year as a consequence of there being a failure to present their insurance on time or that they had not attended for a test on time.

In relation to the 170 licenced taxi/private hire drivers who had been suspended this year, Members were informed that a significant number of these were due to drivers failure to provide their Criminal Record Certificates on time. It was reported that some cases were due to the fault of the driver, others were because of the significant delays of up to 6 months by the Disclosure and Barring Service in processing applications. Others had related to those drivers who were medically unfit or were unable to provide a medical certificate on time. It was further reported that drivers were required to provide a certificate every 3 years which detailed whether or not the applicant had a criminal record. Drivers were assessed by the Council and until such time they were

provided with a certificate, the Council was not in a position to consider applicants as being 'Fit and Proper' persons.

Following the presentation of the report, a Member commented that it had been brought to his attention that some drivers had submitted their applications in the prescribed timeframe, but because of the delay in the system, drivers were being deprived of a living, which was through no fault of their own, which he felt was not acceptable. He asked whether Officers could speak to the relevant agencies to ensure that certificates were processed within sufficient time. The Business and Safety Licensing Manager reported that all criminal record background checks were administered by the Disclosure and Barring Service (DBS). He explained to Members the application process and the reasons why delays could have occurred. The Committee was informed that the Mayor had since lobbied the Police and Crime Commissioner directly with regard to this issue.

It was further explained that previously, the Licensing Authority had given people 3 months' notice prior to the expiry of their certificate and at that time, it was sufficient time for people to submit an application and for receipt of a certificate. As soon as Officers had become aware of the delays at the DBS, the Licensing Authority immediately commenced sending out reminders 6 months in advance of the expiry of their current certificate.

Whilst acknowledging that a significant number of applications were returned with no criminal convictions, which was not helpful for the driver who had been waiting for it to come back, the Business and Safety and Licensing Manager emphasised that the Council would not make a decision without having sight of a driver's criminal conviction certificate and spoke of the potential risk to the public if drivers were allowed to continue driving, as it was not apparent whether they had any convictions that they had not disclosed. The Business and Safety and Licensing Manager highlighted the importance of robust checks being carried out and cited examples of some of the offences that taxi drivers had on their criminal record following checks being carried out by the DBS, which included burglary, ill-treatment of a child and attempted people trafficking.

Members were further informed that drivers were being encouraged to renew their certificates and to apply at least 6 months in advance. It was explained that the DBS provided an update service that drivers could subscribe to, where drivers paid an annual fee of £13, which was less than the renewal fee every 3 years. Providing that a driver didn't get any further convictions, their existing certificate remained valid for life and could be presented to any organisation, and could be checked via a serial number which identified whether there had been any changes. It was suggested that in future, this could be made a mandatory condition for all drivers to sign up to.

To conclude, Members sought clarity regarding the reasons why personal licences (Licensing Act 2003) had been rejected, it was reported that this was because the applicants had failed to satisfy the application requirements and as a consequence, they had decided not to proceed.

RESOLVED to note that:-

- (1) for the period 1st April 2015 to 31st March 2016, the following Committees and Sub-Committees, were convened where

- Licensing Committee - 3 occasions
- Licensing Sub-Committee - 9 occasions

a total of 9 applications / notices were determined by the Licensing Sub-Committee, all of which were applications made under the Licensing Act 2003;

- (2) statistical details of all other licence applications (Licensing Act 2003 and Gambling Act 2005) determined by the Authority and a summary of significant licensing enforcement actions, for the period 1st April 2015 to 31st March 2016, are attached as Appendices A1 and A2 to the report;
- (3) the Statement of Licensing Policy (Licensing Act 2003) underwent its quinquennial review in 2015 on schedule, with the revised Policy taking effect from 7th January 2016; and
- (4) the Statement of Licensing Policy (Gambling Act 2005) underwent its triennial review in 2015 on schedule, with the revised Policy taking effect from the 31st January, 2016.

5 HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY - APPENDIX 10 PRIVATE HIRE OPERATOR - CONDITIONS OF LICENCE

The Committee considered a report which proposed that an additional condition be added to Doncaster Council's existing Private Hire Operator's Licence Conditions, in respect of 'out of town' hackney carriages acting as private hire vehicles in the Doncaster Council Licensing district, subject to consultation being undertaken with private hire operators, private hire vehicle licence holders and hackney carriage vehicle licence holders, on the basis of the proposals set out in Appendix A of the report.

The Business and Safety Licensing Manager reported that following a high court judgement in 2010, which had identified that once a vehicle had been licensed as a hackney carriage, it was a hackney carriage for the duration of that licence, wherever it was currently located, and could therefore could operate on a pre-booked basis anywhere in the country. Furthermore, a hackney carriage vehicle could be used for pre-booked work outside of the district in which the vehicle had been licensed, even if the Licensing Authority was some considerable distance from the district in which the vehicle was undertaking the pre-booked work.

Members were informed that this situation created a number of potential difficulties for the Licensing Authority and had the potential to become a significant issue in Doncaster because of an influx of hackney carriages into the Town which were licensed by other Local Authorities.

The Business and Safety Licensing Manager drew Members attention to Paragraph 15 of the report and highlighted two main concerns for the Licensing Authority; namely that Hackney carriage vehicles and drivers currently licensed elsewhere being used by private hire operators licensed in Doncaster to undertake private hire work. In addition, individuals who previously had not been considered 'fit and proper' to hold a licence by Doncaster Council, e.g. due to inappropriate behaviour, could potentially

become licensed as a hackney carriage driver in another local authority area and then undertake work in Doncaster.

Members were informed that the Licensing Authority was concerned that Hackney Carriage vehicles and drivers operating in Doncaster had obtained their licence from another local authority area, whose standards may not be as rigorous as Doncaster's. It was reported that whilst they were operating within the law, the Council had no ability to regulate them; by carrying out vehicle checks, stop them from operating or remove their licence.

One particular area of concern was that where a Doncaster driver's licence was either revoked or refused by Doncaster Council due to inappropriate behaviour, it was conceivable that, where this behaviour fell short of a criminal conviction, the driver could become licensed elsewhere and undertake work in Doncaster. Therefore, in order to secure that effective safeguards were in place to mitigate against any public safety impact of the application of the cross border rules within Doncaster, it was proposed that a 4 week consultation be undertaken with relevant stakeholders with a view to additional conditions being adopted and included in the existing private hire operator licence conditions.

Following the presentation of the report, the Business and Safety Licensing Manager responded to questions and concerns from Members, in particular as to whether domestic violence was deemed to be 'inappropriate behaviour', whether this had to be self-declared or whether this would be listed on a drivers criminal record when undertaking CRB checks.

Members were assured that any type of violence or dishonesty would be a contra-indicator in determining whether someone was 'fit and proper'. Whether it related to inappropriate behaviour that had taken place in a taxi, or someone who was violent towards their partner, the Licensing Authority would conclude from this that they would be likely to be violent against anybody. However, it was reported that in terms of new drivers, the Licensing Authority would not have any knowledge of how they behaved as a taxi driver and was reliant on the information received from the Disclosure and Barring Service. It was explained that if a driver had a conviction, it was likely that this would be shown on their criminal record as part of the checking process. In relation to enhanced DBS checks, any conviction or caution which they ever received would be identified on their DBS certificate. In terms of existing drivers, it was explained that the Licensing Authority was very much reliant upon them being open and honest with the Licensing Authority by disclosing any convictions or cautions that they receive in the 3 year period between their routine DBS check.

In relation to a question from a Member regarding private hire drivers picking up passengers that had not pre-booked through a licensed operator, the Business, Safety and Licensing Manager advised that this was unlawful and if discovered would be subject to enforcement action. He also reported that taxi drivers operating in the Doncaster area did make the Licensing Authority aware of anyone they felt were operating unlicensed and any vehicles that appeared to be defective.

RESOLVED that

- (1) the Assistant Director, Environment, be authorised, to go out to consultation with private hire operators, private hire vehicle licence holders and hackney carriage vehicle licence holders, on the basis

of the proposals set out in Appendix 1 of the report; and

- (2) the Business Safety and Licensing Manager be tasked to report back to the Committee in respect of the outcome of that consultation and make final recommendations to the Committee.

6 HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING POLICY, HACKNEY CARRIAGE DRIVER, PRIVATE HIRE DRIVER AND PRIVATE HIRE OPERATOR LICENSING - SAFEGUARDING AWARENESS TRAINING

The Committee received a report which proposed changes to the Hackney Carriage and Private Hire Licence Policy, in particular regarding enhancements being made to the suitability test for licensed drivers and operators, which would require all drivers and operators to undertake safeguarding awareness training.

Since October 2015, Doncaster taxi drivers had been offered, on a voluntary basis, safeguarding training, which had been arranged by the Council's Business Safety and Licensing Team in a joint effort to protect the safety of the travelling public.

In presenting the report, the Business Safety and Licensing Manager was pleased to report that since the training had been offered, 75% of taxi drivers had attended the training on a voluntarily basis; which had equated to over 650 people, of which 624 were currently licensed taxi drivers. The training was recognised nationally and it was hoped that this would help to eliminate any safeguarding issues, not only amongst the young, but the elderly and vulnerable people.

Whilst the uptake was encouraging, it was reported that approximately 220-230 drivers had not yet engaged in the process for various reasons, which included those that had no intention of participating; others had difficulty attending during the day because they were working and others had not done so due to the time of day of when the training was offered. Therefore, it was proposed to make training a mandatory requirement for all drivers, including new, existing and taxi operators. Members were informed that to date, 16 training sessions had been provided at various times of the day and that 2 more training days, (8 sessions) were planned for July and August, including evening sessions, which would be offered to those drivers who had not attended.

New applicants and existing licence holders would be required to provide evidence of having undertaken safeguarding awareness training, delivered by an approved provider, before being considered 'fit' and 'proper'. In relation to new drivers, it was intended that their licence would be held in abeyance until they had completed the training, which would be an incentive for them to take part in the training.

Members were informed that the Council was to consult those affected for a period of 4 weeks of its intention to amend the Policy to make the training a mandatory requirement of all licensed drivers and operators, and expand the definition of 'fit and proper'. The training would be made available on a regular basis and would provide the opportunity for new drivers to take advantage of the training before they applied for a licence. Following the outcome of the consultation process, a report would be brought to the Committee with final recommendations.

Members welcomed the proposed changes to the Policy and were supportive of the measures being put in place to ensure that standards in Doncaster remained high.

In response to a point of clarity from Members regarding drivers being considered 'fit' and 'proper', the Business Safety and Licensing Manager advised that consultation would be undertaken on the basis that existing drivers would have until March, 2017, to undertake the safeguarding awareness training and after that time, the Council would be looking at taking some form of action to suspend their licence until they had undertaken the training. Members were supportive of this course of action.

A Member queried a typographical error in the Appendix to the report. The Licensing and Business Safety Manager noted the discrepancy and confirmed that the Appendix to the report should be referred to as Appendix '1' and not as Appendix 'A' as marked in the agenda papers. The Business and Licensing Manager undertook to amend the Appendix to the report (page 47 of the agenda papers), accordingly, in addition to any other references in the report.

At the conclusion of debate, the Business and Licensing Manager took the opportunity to introduce to Members David Smith who had been appointed to the role of Licensing Officer following the retirement of Paul Wilson.

RESOLVED that

- (1) the Committee authorises the Assistant Director - Environment, to go out to consultation, with licensed drivers, private hire operators and interested parties e.g. safeguarding organisations, on the basis of the proposals set out in Appendix 1;
- (2) the Business Safety and Licensing Manager be tasked to report back to the Committee with the outcome of that consultation, and make final recommendations to the Committee; and
- (3) the appendix to the report in respect of agenda item 8 (page 47 of the agenda papers), be amended to read as 'Appendix 1' and not as Appendix 'A', as shown.

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