

BRIGHTON & HOVE CITY COUNCIL
LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 20 NOVEMBER 2014

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Powell (Chair), Lepper (Opposition Spokesperson), Cobb, Gilbey, Hyde, Kennedy, Marsh, Phillips, Randall, Robins, Rufus, C Theobald and Wealls

Apologies: Councillors Bennett and Duncan

PART ONE

10 PROCEDURAL BUSINESS

10a Declaration of Substitutes

10.1 Councillor Randall declared that he was substituting for Councillor Jones and Councillor Wealls declared that he was substituting for Councillor Simson.

10b Declarations of Interest

10.2 There were none.

10c Exclusion of the Press and Public

10.3 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Committee considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100I of the Act).

10.4 **RESOLVED** - That the press and public be not excluded from the meeting during consideration of any item on the agenda.

11 APPOINTMENT OF DEPUTY CHAIR

11.1 Nominations were requested to formally appoint a Deputy Chair for the remainder of the current municipal year. Councillor Ania Kitcat was nominated by Councillor Powell and this was seconded by Councillor Rufus. A vote was taken and Councillor Kitcat was therefore duly appointed.

- 11.2 **RESOLVED** – That Councillor Ania Kitcat be duly appointed as Deputy Chair of the Non-Licensing Act 2003 Functions Committee for the remainder of 2014/15 Municipal Year.

12 MINUTES OF THE PREVIOUS MEETING

- 12.1 **RESOLVED** – That the minutes of the Licensing Committee (Non Licensing Act 2003 Functions) Meeting held on 16 June 2014 be agreed and signed as a correct record.

13 CHAIR'S COMMUNICATIONS

- 13.1 The Chair confirmed that since the last meeting of the Committee, suspensions, revocations and formal warnings had been issued as set out below:

3 Drivers had their licences revoked following motoring convictions

2 Drivers had their applications to renew refused on medical grounds

1 Driver had their application refused due to a previous conviction

1 Driver had their application to renew refused following a road rage incident with another driver

4 drivers have received formal warnings

- 13.2 **RESOLVED** – That the position be noted.

14 PUBLIC INVOLVEMENT

14a Petitions

- 14.1 There were none.

14b Written Questions

- 14.2 There were none.

14c Deputations

- 14.3 There were none.

15 ISSUES RAISED BY MEMBERS

15a Petitions

- 15.1 There were none.

15b Written Questions

15.2 There were none.

15c Letters

15.3 There were none.

15d Notices of Motion

15.4 There were none.

16 LICENCE FEES 2015/2016

- 16.1 The Committee considered a report of the Director of Public Health setting out the proposed licence fees and charges for 2015/16 relating to street trading, sex establishments and sex entertainment Licences, gambling premises, taxi licensing and other licensing functions.
- 16.2 The Head of Regulatory Services, Tim Nichols explained that In order to ensure that council tax payers were not subsidising work concerning licensing administration, income was raised by licence fees which aimed to cover the cost of administration of each regime within constraints of regulation. Licence fees should not be used to raise revenue. The way in which charges were calculated had been reviewed and was now based on a recent detailed analysis of officer time. The regulation of setting fees was detailed and changes which were considered necessary as a result of legislation and the outcome of recent case law were set out in the report.
- 16.3 Councillor Rufus sought clarification regarding the rationale for lowering some/ raising some of the fees by the levels indicated in the current year. He understood the need to bring the accounts into balance and the rationale for this, but as some were well above the level of inflation this could be considered hard to justify. He queried whether it would be possible to bring the level of fees charged into line over several years. The Head of Regulatory Services, Tim Nichols explained that it was intended to bring the accounts into balance by the close of the current financial year, as this was recognised a fiduciary best practice. It was also not possible to roll budgets forward from one year to the next in view of the requirement to cover costs, but not to raise revenue. The Accountant to the Committee, Steven Bedford, confirmed that this was so and explained the precise rationale for each of the levels of charge proposed to be levied.
- 16.4 Councillor Kennedy understood all that had been said and the case law which stood behind it but stated that she was unable to support the recommended reductions to the levels due by sex entertainment venues and sex establishments. Such levels sent the wrong message given the privations of many who considered themselves “trapped” within the sex industry; It was regrettable that money raised could not be used towards supporting those who wished to leave the trade. Therefore she would abstain when the vote was taken, notwithstanding that she did not object to the other report recommendations.
- 16.5 Councillor Randall concurred with all that had been said by Councillor Kennedy confirming that he would abstain from voting for the same reason. Councillor Randall also referred to the level of fee increases proposed for hackney carriage and private hire

drivers, both of which seemed very high given the current fragile condition of the local economy and the fact a number of businesses/operators continued to struggle.

- 16.6 Councillor C Theobald also considered that the suggested levels of increases for hackney carriage and private hire drivers seemed very high and sought clarification of how this figure had been arrived at and whether the trade had been consulted.
- 16.7 Councillor Robins referred to paragraph 3.5 which needed to be corrected as it contained a double negative.
- 16.8 Councillor Cobb referred to paragraph 3.10 requesting clarification whether the proposed reduction of 5% was correct.
- 16.9 Councillor A Kitcat referred to the case law referred to in the report, particularly in relation to the level at which fees were set for licensed sex establishments and whether those set in Brighton and Hove could be subject to challenge. The Legal Adviser to the Committee, Rebecca Sidell explained that any decisions taken were always subject to challenge and if costs were successfully applied for could be very expensive. If set in line with prevailing legislation and case law however, an authority would be able to evidence their decision making process and the rationale for the level of fees and charges set.
- 16.10 Councillor Wealls sought clarification of how sex establishments were defined for levying of fees. He also sought clarification of whether the proposed fees for hackney carriage and private hire drivers had been notified to the Taxi Forum and whether a response had been received from them.
- 16.11- A vote was taken and of the 13 Members present when the vote was taken the recommendations in the Officer's report were agreed on a vote of 8 with 5 abstentions.
- 16.12 **RESOLVED** - That the committee approves the following variation to licence fees:
- Hackney carriage driver fee +58.7%, hackney carriage vehicle fee +5.1%, private hire driver fee +25.6% and private hire vehicle fee -51.5%.
 - Sex entertainment venues and sex establishments are decreased by -38.5%.
 - Street trading fees - decreased by -5% (street artists & misc. short term -6.3%).
 - All Gambling Act 2005 fees remain the same.

17 PET VENDING - MODEL LICENSING CONDITIONS

- 17.1 The Committee considered a report of Director of Public Health outlining the results of the consultation required as a result of the recommendations made by the Committee at its meeting of 26 June 2014.
- 17.2 At that time the Committee had:
- Noted that progress had been made regarding the possible use of the CIEH published Model Licence Conditions for Pet Vending and that the issue warranted further discussion and consultation;

- Noted that progress had been made regarding the possible mandatory distribution of the EMODE leaflet to prospective pet shop customers and that the issue further warranted discussion and consultation;
- Directed officers to consult further on the EMODE leaflet, to explore whether objections from all trade bodies could be satisfied; that a full review be conducted, and that this item be brought back to the scheduled November 2014 Licensing Committee (Non Licensing Act 2003 Functions) for full discussion';
- Noted the work done in the use of CIEH model licence conditions for pet vending; and
- Had requested that further research be done into how these proposed changes would improve/not improve the lives of animals in the pet trade, and as such, that the item is brought back post-publication of the review for full discussion at the next scheduled meeting of the Committee in November 2014.

- 17.3 Following that meeting and as a result of the Committee decision of 26 June a number of work streams had been developed. Officers had consulted with the Chartered Institute of Environmental Health, the RSPCA, the Animal Protection Agency, The Pet Federation Agency, Pet Shops, Animal Sanctuaries and the general public. The results of that consultation and the rationale for the recommendations were set out in the report, the supporting appendices detailed further consultation undertaken and responses received.
- 17.4 Councillor Lepper stated that she considered the recommendations represented a reasonable response in view of the current position and fully supported them.
- 17.5 Councillor Randall noted the concerns and objections received from the RSPCA and sought confirmation regarding whether they had given any indication as to how they would be carrying their own work in terms of encouraging better practice forward and when that was likely to come on stream. Notwithstanding the current position he was also of the view that it was important to continue to keep up the pressure to ensure that all pet vending establishments aspired to and maintained the highest standards and sought to ensure that all potential pet owners were fully aware of their responsibilities in caring for an animal.
- 17.6 Councillor Robins referred to the EMODE matrix stating that whilst happy to support the report recommendations' he still considered that the grid used was very confusing as in some instances the same animal, e.g., cats/ dogs could appear at different points being classed both as both "easy" and "moderately difficult".
- 17.7 Councillor C Theobald stated that it was important that potential purchasers/owners were given the correct information and support.
- 17.8 **RESOLVED** – (1) That the Committee does not agree the use of this version of the new CIEH published model licence conditions 2013 for Pets Vending; and
- (2) That Committee agree that pet shops be encouraged to stock and distribute the EMODE leaflet to prospective customers on a voluntary basis.

18 BHCC CLEANER TAXIS PROJECT - NATIONAL PILOT

- 18.1 The Committee considered a report of the Director of Public Health detailing the successful outcome of a bid made to the Department of Transport's (DfT) for the Clean Vehicle Transport Scheme.
- 18.2 It was noted that the council had been awarded £195,000 for the retrofit of up to thirty larger taxis or minibuses with compact Selective Catalytic Reduction (SCR) Technology (200mm and smaller). The award followed similar funds awarded for the retrofit of older buses in 2013.
- 18.3 Councillor A Kitcat commended the report and the hard work by officers which had resulted in this successful bid.
- 18.4 Councillor Hyde referred to the fact that there were several areas across the city where it was recognised that air quality was poor. Rottingdean High Street in her ward was one of them and Councillor Hyde enquired regarding any measures proposed to address this problem. The Head of Regulatory Services, Tim Nichols that on-going work was being carried out in co-operation with colleagues in the Environment, Transport and Sustainability team. Discussions had included representatives of Rottingdean Parish Council.
- 18.5 Councillor Robins referred to an engine cut-out device currently available, this was designed to reduce emissions when vehicles were queuing in stationary traffic. This usually needed to be operated manually and was not without its difficulties. The Head of Regulatory Services explained that the Taxi Forum had considered this issue and that potential alternatives would be investigated. He further explained that if the current levels of control available to the licensing authority were to be reduced as a result of changes to the existing legislation by Central Government, then the authority's powers in this regard were likely to be reduced.
- 18.6 Councillor Rufus sought clarification of the type of equipment required and whether this would last for the life of the vehicle. The Head of Regulatory Services that this matter was under investigation in order to find out which system/s would work best, regard would also be given to similar projects taking place elsewhere around the country.
- 18.7 **RESOLVED** – That the content of the report be noted.

19 NON PAYMENT OF FARES NOTICE

- 19.1 The Committee considered a report of the Director of Public Health seeking approval of the wording of the notice for use in Hackney Carriage and Private Hire Vehicles designed to deter non-payment of taxi fares.
- 19.2 The Hackney Carriage Officer explained that the suggested wording agreed by the Trade and Sussex Police was:

“Before hiring this vehicle:

- Please ensure you have the means to pay. Deliberate failure to make payments before leaving this vehicle is a Criminal Offence.”

- 19.3 The Hackney Carriage Officer, Martin Seymour explained that the trade had requested permission to use a notice to include Sussex Police and Council Logos in vehicles to help prevent the deliberate non-payment of fares by some customers and to raise awareness that non-payment was a criminal offence. The trade have been working with Sussex Police on the wording of a notice and were now requesting that the agreed wording was approved by Committee for use in Hackney Carriage and Private Hire vehicles.
- 19.4 **RESOLVED** – That the Committee approve the notice wording set out on Paragraph 3.4 of the report and above and use of the Council logo on any notice produced.

20 HACKNEY CARRIAGE WAITING LIST CONDITIONS

- 20.1 The Committee considered a report of the Director of Public Health seeking to remove some restrictions which currently applied to applicants on the Hackney Carriage Waiting List.
- 20.2 The Hackney Carriage Officer, Martin Seymour explained that the Council currently operated a restricted numbers policy for hackney carriage vehicles with a managed growth of 5 additional plates issued on an annual basis in May. Any additional licences issued were issued in accordance with the conditions attached to the Brighton & Hove City Council Hackney Carriage Vehicle Licence Waiting List.
- 20.3 It was proposed to remove the conditions of entry on to the Hackney Carriage Waiting list that required an applicant to:
- (a) reside within 5 miles of the Council boundary;
 - (b) have held a Brighton and Hove hackney carriage driver licence or a Brighton & Hove private hire driver licence for at least 12 months immediately prior to the date of application; and
 - (c) be working full time in the hackney carriage or private hire trade based in Brighton and Hove at the time of application.
- 20.4 Currently, additional plates were offered to applicants on the waiting list in order of priority determined by the number of credit points (years) on which the applicant had applied to be included on the list. Currently where two or more applicants had the same number of credit points they were offered to drivers in order of priority by the date of issue of their first hackney carriage or private hire driver licence and applicants living in Brighton & Hove.
- 20.5 Councillor Hyde enquired why a distance of 5 miles of the city boundary had been chosen and the Hackney Carriage Officer, Martin Seymour explained that generally preference as given to those living in or near the city, they were also likely to have a greater level of local knowledge.
- 20.6 Councillor C Theobald asked whether the distance of 5 miles had been agreed with the trade and it was confirmed that it had.

- 20.7 Councillors Marsh and Lepper were in agreement that the current restrictions on numbers should remain in place until/unless the results of a review suggested they be revisited. In terms of distance however, they considered that consideration could be given to applying this more flexibly in future bearing in mind that the high costs of renting or buying a property in the city were such that many of those working in the city had no option other than to live outside its boundaries and commute in.
- 20.8 Councillor Robins concurred in this stating that a number of people who had family ties within his ward found themselves having to live further out. Councillor Robins referred to the close proximity of the boundaries of East and West Sussex to certain areas of the city. He sought clarification as to whether there were restrictions in terms of drivers across these boundaries and whether either of those authorities operated similar distance criteria.
- 20.8 Councillor Rufus was in agreement with all that had been said, whilst also being of the view that it was important not to “open up” trade in the city to those who had scant knowledge of it, he had concerns in respect of recommendation (c).
- 20.9 Councillors Hyde and C Theobald considered that application of a 10 mile radius rather than a 5 mile radius could be better.
- 20.10 Councillor Kitcat considered that if the trade considered that a 5 mile distance was appropriate that the Committee should be mindful of that.
- 20.11 **RESOLVED** – That the Committee approve the proposed amended conditions for entry on the Hackney Carriage Waiting List set out in Appendix A to the report.

21 HACKNEY CARRIAGE UNMET DEMAND SURVEY AND CONSULTATION ON WHEELCHAIR ACCESSIBLE VEHICLE PROVISION

- 21.1 The Committee considered a report of the Director of Public Health confirming that a Hackney Carriage “Unmet Demand Survey” would be undertaken during 2015 to determine any unmet demand for Hackney Carriages.
- 21.2 The Hackney Carriage Officer explained that the survey would look at current policies and provision of hackney carriage vehicles in the context of other similar authorities in England and in particular Wheelchair Accessible Vehicle Provision.
- 21.3 Councillor Hyde enquired whether the current number of vehicles was considered to be sufficient. The Head of Regulatory Services responded that the current policy could be reviewed should the consultant’s report indicate that changes might be required.
- 21.4 Councillor Marsh stated that in her view it was important to maintain the number of vehicles including WAV’s at their current level unless there were clear indications that changes were necessary. The existing arrangements seemed to work well and it was important to maintain a mixed fleet bearing in mind that not all disabled passengers were able to access WAV’s.

- 21.5 Councillor Lepper concurred in that view stating that she considered it was essential to maintain a mixed fleet as was currently the case as this would best meet the needs of the travelling public overall.
- 21.6 Councillor C Theobald considered that the current number could be too high and therefore welcomed the opportunity for that figure to be reviewed.
- 21.7 Councillor Cobb sought clarification that currently the figure stood at no more than 5 additional plates annually, it was confirmed that this was the case and, the frequency with which reviews took place. The Head of Regulatory Services explained that the Unmet Demand Survey consultation took place every three years and that the next consultation was now due to take place.
- 21.8 **RESOLVED** – (1) That Members confirm their support for a restricted numbers policy for hackney carriage vehicles with managed growth of five additional plates issued annually to wheelchair accessible vehicles. This policy to be reviewed following the consultant's report; and
- (2) That any report should compare current policies and provision with other similar authorities in England to provide evidence in relation to the perceived or actual problem of availability of wheelchair accessible vehicles and consultation with local stakeholders.

22 ETHNICITY MONITORING OF THE HACKNEY CARRIAGE/PRIVATE HIRE TRADE FOR 2013/14

- 22.1 The Committee considered a report of the Director of Public Health detailing the results of Ethnicity Monitoring of the Hackney Carriage/ Private Hire Trade 2013/14.
- 22.2 Councillor Kennedy welcomed the report she considered provided a "snapshot" of those working as Hackney Carriage and Private Hire Drivers in the city.
- 22.3 Councillor Robins sought clarification whether this information was held primarily to satisfy equalities and human resources requirements. The Head of Regulatory Services, Tim Nichols explained that the data collected was valuable as it provided information regarding diversity of those employed in the trade.
- 22.4 **RESOLVED** – That the results of Ethnicity Monitoring of the Hackney Carriage/Private Hire Trade 2013/14 be noted.

23 ITEMS TO GO FORWARD TO COUNCIL

- 23.1 There were none.

The meeting concluded at 4.40pm

Signed

Chairman

Dated this

day of