LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)	Agenda Item 11 Brighton & Hove City Council

BRIGHTON & HOVE CITY COUNCIL

LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

3.00PM 30 JUNE 2016

FRIENDS MEETING HOUSE, SHIP STREET, BRIGHTON

MINUTES

Present: Councillors O'Quinn (Chair), Horan (Deputy Chair), Wares (Opposition Spokesperson), Deane (Group Spokesperson), Allen, Bell, Cattell, Gilbey, Hyde, Lewry, Moonan, Page and Phillips

PART ONE

1 PROCEDURAL BUSINESS

1a Declaration of Substitutes

1.1 There were none.

1b Declarations of Interest

1.2 There were none.

1c Exclusion of the Press and Public

1.3 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).

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

2 MINUTES OF THE PREVIOUS MEETING

2.1 **RESOLVED** – That the minutes of the Licensing Committee (Licensing Act 2003 Functions) Meeting held on 3 March 2016 be agreed and signed as a correct record.

3 CHAIR'S COMMUNICATIONS

3.1 The Chair explained that since the last meeting of the Committee:

Hackney Carriage & Private Hire Vehicles

Suspensions & Revocations

1 Driver had his driver licence revoked for non-payment of the licence fee.

2 Drivers had their licences suspended on medical grounds

2 Drivers had their licences suspended pending investigations by the police

2 Driver's had their licences suspended on conduct grounds

1 Drivers licence was suspended due to drug use

2 Drivers have received formal warnings for flipping

2 Applicant's received warnings relating to previous cautions

1 Application was refused due to convictions and cautions relating to supplying drugs.

3.2 Councillor Simson stated that she considered the information provided in the Chair's Communications gave cause for grave concern, including as it did, probably some of the worst instances of unacceptable behaviour by drivers which had ever been brought before the Committee. Councillor Hyde concurred in that view and Councillor Simson sought additional information and clarification in respect of the information given. The Hackney Carriage Officer explained that the instance relating to supply of drugs had been disclosed by the applicant on their DBS Disclosure Form. In the case of the licence suspended due to drug use, the driver concerned had informed the Hackney Carriage Office directly, notification had also been received via Social Services who had involvement with his family.

3.3 **RESOLVED –** That the content of the Chair's Communication be noted.

4 CALLOVER

4.1 All items appearing on the agenda were called for discussion and note.

5 PUBLIC INVOLVEMENT

5a Petitions

5.1 There were none.

5b Written Questions

5.2 The Chair reported that 1 public question had been received.

5.3 Ms Becky Rogers asked the following question:

"The proceedings on the revocation of the licence of the convicted taxi driver veered disastrously off track. Cyclists and pedestrians feel inadequately protected. Will the Committee ensure that complaints about road traffic issues involving taxis e.g. unsafe driving/speeding are received by the Council as well as the Police? Will the council:

(1) revise the 'Blue Book' to include exemplary standards of conduct towards other road users;

(2) use powers/influence to stop taxis blocking Advanced Stop Lines; and

(3) introduce outward-facing CCTV (4) develop a dialogue with vulnerable road users about these issues, in addition to receiving the trade-based Taxi Forum view?"

5.4 The Chair gave the following response:

"The Council did everything it could to take this driver off the road, including going to court twice to defend its decision to revoke the drivers licence. The decision to re-instate his licence was taken by the Magistrate's Court and is not the Council's decision. The High Court gave us a different interpretation of the law and this is outlined in the report (Agenda item 8).

Ideally the Police should notify us of such issues and do most of the time but we have no power to require them to do so. Unfortunately, the Council were not informed of this offence and only picked up on it through a Council lawyer attending court that day. The Council then took action to revoke the drivers licence. We are largely dependent on intelligence being passed to us from the police and public and have requested information from the police in the future.

The current "Blue Book" has very high standards compared to many local authorities, leading the way in areas such as disabilities, child protection, domestic violence, etc. It sets out clear licensing objectives and standards. It is not clear what further standards in relation to conduct towards other road users could be applied, over and above those already required by a driver under the Road Traffic Acts and the 'fit and proper test'. The Council has wide discretion in applying the "fit and proper" test and must judge on a "case by case" basis. It did so in this case and took what it considered appropriate action. As already explained, the Court took a different view. We would expose ourselves to judicial challenge if the system required more of a driver than is already covered by the Road Traffic Act and the "fit and proper" test.

Such an Infringement - encroaching into the advanced stop line cycle space in front of traffic lights when light is red- is a specific infringement under the Traffic Signs, Regulations and General Directions 2016, and thus is an offence under the Road Traffic

Regulation Act 1984. It is primarily a traffic police matter. The Council has no power to deal with the offence. Having said that we deal with issues of road safety at our regular Taxi Forum. Indeed "Advanced Stop Lines" was an agenda item at the last forum and a presentation and guidance was given to drivers by the Road Safety Team."

5.5 Ms Rogers then asked the following supplementary question:

"Do you agree that Road Safety and the governance of this area would be improved if you received complaints and adequate information about road traffic issues that affect vulnerable road users e.g. when people report issues to Operation Crackdown, they also send a copy to the Hackney Carriage Office or the Council?"

The current policy does not invite this information, as shown in Item 8, page 11-12 which clearly states:

"Complaints about:

- antisocial driving
- unsafe driving/speeding
- using mobile phones while driving
- moving traffic offences
- road rage
- ignoring traffic signs and signals

Should be reported to Sussex Police via Operation Crackdown."

5.6 Ms Reynolds stated that the point she was making was that currently there was no requirement that a copy of a report (by the police) about a bad road traffic experience should also be sent to the council. The Council therefore remained ignorant of most of the negative experiences of cyclists and pedestrians, such as taxis pulling into Advanced Stop Line areas or performing other manoeuvres to the detriment of cyclists. It would appear that the channel of information between Sussex Police and the Council required improvement. Information about road traffic incidents involving taxis and vulnerable road users needed to be better collected, shared and acted upon, with a clear remit for improvement, and measurement of outcomes. It was considered that Taxi Forum and the Hackney Carriage Office would benefit from the perspective of cyclists and pedestrians and it would be helpful if membership of the Forum could be extended to include representatives from these groups.

5.6 The Chair gave the following response:

"Thank you for the points you have raised. I think the Committee has taken on board your comments about the need for better communications regarding road traffic incidents/issues between the police and the council. I am sure that work will be done to progress this. I agree that it is important to gain as detailed a picture as possible of any road safety issues. At the next meeting of the Taxi Forum scheduled to take place on 20 July 2016, the matter will be raised and discussed as to whether it is be possible to have a broader range of road user interests represented."

5.7 In concluding this item, the Chair confirmed that all that had been said was noted and that the matters raised would also be taken on board when the Blue Book was next updated. It was important to note that regular Taxi Forum meetings took place between Members, Officers and representatives of the trade and any issues/on-going issues were discussed.

5c Deputations

5.7 There were none.

6 MEMBER INVOLVEMENT

6a Petitions

6.1 There were none.

6b Written Questions

6.2 There were none.

6c Letters

6.1 The Chair confirmed that one letter had been received from Councillor Peltzer Dunn as set out in the agenda and below:

"I have previously raised my concern about a serious road safety problem that has arisen outside the entrance to West Hove Junior School and other schools where it appears that street traders have sited their ice cream vans in very close proximity to the school's exit. This results in the pavement being blocked and children and adults being forced out into School Road placing them in danger during the very busy time when the children leave school.

Provided the traders van is in a legal parking space no action can be taken as they are not breaking any Council regulations for Street trading within Zone B of the scheme.

Over the past years there has been increasing debate over the unhealthy nature of school children's eating habits and this is certainly not helped by the proximity of street traders vans such as that above.

I am aware that a review was undertaken in 2009 in respect of the possibility of having exclusion zones and that the Street Trading Policy was agreed in 2013. However, I believe that in the interests of both road safety and on health grounds it would be appropriate for the committee to request officers to undertake a review of the Council's Street Trading Policy within Zone B to prohibit such street trading within a minimum of 50 metres of a School's entrance/exit."

6.2 The Chair gave the following response:

"In 2009 the Licensing Committee considered a report into possible exclusion" zones around schools in 2009 and after extensive consultation the Licensing Committee

decided that using street trading regulations to promote healthy food, although appealing, may not be proper use of the regulatory controls. There has been a recent case in North Lanarkshire which ruled that a ban on Burger vans selling within 250 metres of schools was not lawful on grounds of diet and health.

Street trading consent regulations' primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise. The department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme and the recently launched Sugar Smart City initiative. Using street trading regulations to promote healthy food, although appealing, is not likely to be proper use of the Regulatory controls."

Street Trading Consent Zone B
Local Government (Miscellaneous Provisions) Act 1982

The Council's Street Trading Policy was set by Members at Licensing Committee after extensive consultation and was last considered at Licensing Committee on the 21st November 2013.

The city centre streets, with a few exceptions, are prohibited streets. There are five static pitches within the City Centre (Zone A), mainly off Western Rd Brighton, where trading is permitted. Outside of the city centre (Zone B), traders with a consent can trade on the highway, providing they are not causing a nuisance, obstruction or danger to the public. The Council's street trading policy can be found from the following link, http://www.brighton-hove.gov.uk/content/business-and-trade/licensing-and-gambling/street-trading which sets out in a table the type of trading permitted in certain areas of the city.

Ice Cream Vans are issued permits by the Licensing Team giving them consent to trade as "Mobile Street Trading". Mobile Street trading is allowed in Zone B (outside of the city centre), with the exception of Parks & Gardens and within 1 mile of the Falmer Community Stadium therefore it gives mobile trading a wide area to trade from. There are no stipulations of roads but only that trading takes place within Zone B in accordance with the Street Trading Policy.

In order for any proposed Policy change to go to Licensing Committee, we would need significant input from the public in the form of a petition, deputation or councillor question for Committee to agree to begin extensive consultation on the proposed change. The basis for such change would need to be appropriate and lawful.

It is worth noting that the Licensing Committee considered a report into possible "exclusion" zones around schools in 2009 and after extensive consultation the Licensing Committee decided that using street trading regulations to promote healthy food, although appealing, may not be proper use of the regulatory controls. There has been a recent case in North Lanarkshire which ruled that a ban on Burger vans selling within 250 metres of schools was not lawful on grounds of diet and health. Please see the link to the BBC report: http://www.bbc.co.uk/news/uk-scotland-glasgow-west-34983735

The regulation of street trading by consents covers infrequent, itinerant trading. There is no right of appeal against refusal and so it is vital that licensing authorities behave in a

fair and reasonable manner. An established street trader would have a reasonable expectation that his/her consent would continue. Street trading consent regulations' primary purpose is to prevent obstruction of the street or danger to persons using it, or nuisance or annoyance to people using the street or otherwise. The department promotes diet, health and local food issues including engagement with school children by its healthy awards scheme and the recently launched Sugar Smart City initiative. Using street trading regulations to promote healthy food, although appealing, is not likely to be proper use of the Regulatory controls."

6.3 Councillor Peltzer Dunn thanked the Chair for her response which was in line with the officer response which he had received previously. Whilst acknowledging all that had been said he had major concerns in relation to safety and would like further consideration to be given to that aspect. When he had raised this matter at the meeting of the Children Young People and Skills Committee recently Members had expressed support that the feasibility of any further action which could be taken should be explored.

6.4 Councillor Hyde noted all that had been said and asked whether it would be possible for the current arrangements to be revisited and for a report to be brought back to a future meeting of the Committee in order for members to determine whether they considered it appropriate to review the current arrangements. Councillor Hyde added that in her view it would be appropriate to look at the city as a whole than focusing only on outer areas.

6.5 Councillor Simson stated that as the existing policy had last been updated in 2009, in her view it was appropriate to revisit it, especially as it appeared that this problem might be increasing.

6.6 Councillor Deane considered that it would be very helpful to the committee if a holistic approach could be taken and thought to more generic safety issues, for instance if a vehicle was parked on the opposite side of a busy road from a school, that constituted a greater potential road safety risk than if a vehicle was parked on the same side of the road.

6.7 Councillor Moonan agreed that it would timely to investigate this matter further.

6.8 The Public Health, Licensing Lead, Jim Whitelegg explained that when this matter had been looked at in the past the means by which different types of vehicles could be defined had been unclear and it had not been permitted under legislation to consider road safety issues.

6.9 Councillor Wares sought confirmation as to the committee were agreeing to undertake a review presently? The Legal Adviser to the Committee, Rebecca Sidell confirmed that at this stage the Committee were authorising officers to assess the current policy in relation to street trading and to submit a report to a future meeting of the committee recommending whether it would be appropriate to review it.

6.10 **RESOLVED –** That a further report be brought forward to a future meeting of the committee assessing the current policy in relation to street trading and advising as to whether it would be appropriate for it to be updated.

6d Notices of Motion

6.11 There were none.

7 HACKNEY CARRIAGE STANDS

7.1 The Committee considered a report of the Acting Director of Public Health providing an update on Hackney Carriage stand provision in the city.

7.2 The Public Health, Licensing Lead, Jim Whitelegg explained that the council licensed hackney carriage vehicles and private hire vehicles. The principal differences between the two licensing regimes were (i) hackney carriages could ply for hire in the streets and at taxi ranks (referred to as "stands" in legislation) whilst private hire vehicles can only accept bookings made through a private operator (ii) powers exist to limit the numbers of hackney carriages in prescribed circumstances but there is no power to limit the number of private hire vehicles (iii) the council prescribes fares for private hire bookings.

7.3 It was explained that the council had last reviewed its policy of quantity control of hackney carriages on 19 November 2015. Currently council policy limited the number of hackney carriage vehicle licences to 565 with 5 additional licences issued annually in May.

7.4 The Public Health, Licensing Lead went on to explain that a meeting had been held with stakeholders on 20 June in order to discuss concerns regarding operation of the private stand at Brighton Station. This had included Councillor Deane in her capacity as a Local Ward Councillor Councillor Deane was also a Member of this Committee and representatives of Brighton and Hove Bus and Coach Company, the Taxi Forum and Council Officers representing taxi licensing, transport and environment and GTR. The meeting had been chaired by Councillor Gill Mitchell and had followed an earlier one at which it had been agreed to seek to find an alternative location for the existing taxi rank at the front of the station where Council officers had agreed to develop some engineering proposals for relocating rank space on Stroudley Road and relocating existing parking bays. The Council had also looked at possible routeing to the north, to the east and to the south through the North Laine. This information had been put together and had been presented as two options for discussion at the meeting. GTR had also reported back on progress on how the alternative rank location could be marketed and planned to accommodate customers and current arrangements at the station. Productive discussions had taken place and stakeholders had agreed to contribute towards the cost of developing designs and solutions. A further meeting was planned in order for GTR and Council officers to develop a preferred option.

7.5 Councillor Simson welcomed the report and the fact that further ongoing discussions were taking place with the trade. Problems arose when vehicles did not wait at ranks or when over ranking occurred. It was noted that the sea front and station remained particular problem areas currently. Councillor Deane also welcomed the work that had been undertaken hoping that there would be positive outcomes as result.

7.6 The Chair Councillor, O'Quinn stated that she was taking this matter forward proactively and that it was her intention to attend meetings with the trade and other stake holders on matters germane to licensing.

7.7 **RESOLVED –** That the content of the report be received and noted.

8 HACKNEY CARRIAGE & PRIVATE HIRE DRIVER ENFORCEMENT

8.1 The Committee considered a report of the Acting Director of Public Health advising on driver enforcement in respect hackney carriage and private hire vehicles.

8.2 The Public Health Licensing Lead, Jim Whitelegg explained that the council licensed hackney carriage and private hire vehicles, drivers and operators. Hackney Carriages could ply for hire in the streets and at taxi ranks ("stands" in legislation) whilst Private Hire Vehicles could only accept bookings made through a Private Hire Operator. Details of the enforcement measures available were set out in the report as were details in relation to the incident in relation to an accident between a private hire vehicle and a cyclist (subject of a public question detailed at 5(b) of these minutes above). The driver concerned had cut across the path of the cyclist knocking her off the bike and had driven off at speed without checking whether she was injured or offering any assistance.

8.3 Councillor Horan stated that this issue was alarming enquiring as to means by which it could be ensured that all vehicle drivers could be identified easily.

8.4 Councillors Simson and Deane concurred stating that although an isolated incident this reflected very badly on the trade did little to promote confidence, and could have resulted in a tragedy. Enforcement measures available needed to be as robust as they could be and the clarification and update provided by the report were welcomed. Councillors Wares and Page concurred in that view. Councillor Wares considered that whilst the seriousness of this particular incident could not be overstated it was important to note the positive initiatives which had been instigated by the licensed taxi trade in the city too.

8.5 Councillor Wares stated that he was pleased to note that enforcement was a standing item at meetings of the Hackney Carriage and Private Hire Forum, members of which included members of the trade, unions, Sussex Police, Brighton and Hove bus Company, local disability groups and officers of the council.

8.6 Councillor Moonan stated that the decision taken by the individual Magistrate in this instance was unfortunate and it was difficult to comprehend the rationale for it.

8.7 Councillor Phillips stated that it was important to note that a number of drivers across the city provided a very good standard of service to their customers.

8.8 The Chair noted all that had been said and in closing the debate stated that the point made by Ms Reynolds when putting her supplementary question (minute 5b above refers) had been well made. It was important to seek to ensure that there was better communication between the police and the council regarding road traffic incidents and she was sure that further work would be done to ensure that happened.

8.9 **RESOLVED –** That the content of the report be received and noted.

9 ITEMS REFERRED FOR COUNCIL

9.1 There were none.

The meeting concluded at 4.15pm

Signed Chairman

Dated this day of