



**MINUTES OF THE MEETING OF THE
LICENSING SUB-COMMITTEE OF THE CABINET**

**THURSDAY 14 FEBRUARY 2013
COUNCIL CHAMBER, TOWN HOUSE, HADDINGTON**

Committee Members Present:

Councillor McNeil (Chair)
Councillor D Grant
Councillor J Williamson
Councillor J McMillan
Councillor F McAllister

Council Officials Present:

Mr I Forrest, Legal Advisor
Ms M Winter, Licensing Administration Officer
Mr I Dagleish, Transportation Manager

Others Present

Insp A Harborough, Lothian & Borders Police (Items 1-4)
PC H Bowsher, Lothian & Borders Police
Mr C Paxton, Co-Chair of the Taxi Association (Items 4, 7 and 8)
Ms R Lees, representing M & F Funeral Services (Item 4)
Ms S Dougall, Elite Private Hire (Item 7)

Clerk:

Mrs F Stewart, Committees Assistant

Apologies:

Councillor J Caldwell

Declarations of Interest:

None.

SUMMARY OF PROCEEDINGS – EXEMPT INFORMATION

The Licensing Sub-Committee unanimously agreed to exclude the public from the following business containing exempt information by virtue of Paragraph 6 (information concerning the financial or business affairs of any particular person other than the Authority) of Schedule 7A to the Local Government (Scotland) Act 1973.

1. Applications for Grant of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered one application for grant of a licence and this was granted for a period of 6 months.

2. Application for Renewal of Taxi/Private Hire Car Driver's Licence

The Sub-Committee considered four applications for renewal of a licence; three were agreed and one licence was revoked with immediate effect.

PUBLIC ITEMS

3. COMPLAINT RE USE OF BLEACHINGFIELD, DUNBAR AS A VENUE FOR FUNFAIRS

The Executive Director (Support Services) had submitted a report to advise the Sub-Committee of the complaint received concerning the Bleachingfield, Dunbar being used as a venue for funfairs.

The Legal Adviser presented the report, advising that Bleachingfield was an area of ground owned by the Council and had been an official showground site for some time. A complaint had been received regarding the use of the site for this purpose, and relevant departments and officials had been contacted for comments. Lothian & Borders Police had indicated that they would support the complaint and suggested Winterfield Park as an alternate venue and Environmental Health had confirmed that they had received one complaint about noise during the last funfair. Landscape and Countryside advised that they had no issue with the site being used as a funfair and the show people had indicated that they were not in favour of Winterfield as an alternative show site due to lack of facilities and the reluctance of the public to travel to this location.

The Chair stated that further consultation would be required before any decision could be taken on the future of the funfair at Bleachingfield. The funfair would be visiting again in March and that would afford an opportunity for local Councillors to receive further feedback and for Environmental Health officials to attend. The Chair added that the public had enjoyed visiting the funfair on this site and noted that only one complaint had been received. Further investigation would indicate whether more local people were unhappy with the present arrangement. He stressed that there were no safety issues in relation to the funfair.

Councillor Grant supported the Chair's view on the matter and Councillor McAllister proposed that, in the absence of other reports, the complaint was noted and no further action taken unless further complaints were received.

The Police spokeswoman advised that she had consulted the local police on the matter and they had agreed that it could be noisy and that there was an element of anti social behaviour to be expected at such events.

Decision

The Sub-Committee agreed to continue this matter until April to allow further consultations to take place during March when the funfair will return to Bleachingfield.

4. TRADE REQUEST FOR ADDITIONAL TAXI RANK IN TRANENT

The Executive Director (Support Services) had submitted a report to advise the Sub-Committee of the outcome of the consultation on the proposal for an additional taxi rank at Winton Place, Tranent.

Colin Paxton, Co-Chair of the East Lothian Taxi and Private Hire Association (ELTPHA), and Ros Lees, representing M & F Funeral Services were present.

The Legal Adviser presented the report, stating that the Sub-Committee had considered at the meeting on 11 October 2012 a request from the East Lothian Taxi and Private Hire Association for the creation of additional taxi ranks. They agreed that the proposal relative to Tranent should proceed to public consultation as provided for in terms of Section 19 of the Local Government (Scotland) Act 1982. The proposal had been advertised in the local press on 7 December 2012 and letters of objection had been received from 4 parties based in the locality of the proposed stance. The main concerns of the objectors had related to increased congestion, loss of parking facilities, increased noise and an adverse impact on local businesses fronting onto the proposed location. A response from the Council's Transportation Department had been received which did not support the proposal and Lothian and Borders Police had suggested that additional stances opposite the current taxi rank in the High Street would be a better option to the proposed site.

Colin Paxton had no objection to considering alternative locations for the new taxi stances, but strongly believed there should be additional stances at this end of Tranent. He sympathised with local businesses, but, in his view, there was a need for a taxi rank in this location as there was currently no safe place to pick up or drop off passengers.

The Chair acknowledged the need for additional taxi stances but agreed that there was an alternative location 2-3 minutes distance away from the proposed location which could be considered.

Mrs Lees stated that M & F had purchased their property in this location specifically because there was access to the property, adding that it was not dignified or respectful for coffins to be carried into their premises from locations further down the High Street.

Councillor Grant, Local Member, stated that he was not convinced that the proposed taxi rank was the best solution and he welcomed the view from the Trade that they would consider alternative locations.

The Legal Adviser advised that if Members were minded to consider an alternative proposal, the ELTPHA would have to submit a new proposal and this, in turn, would need to go out to consultation.

Decision

Having considered the terms of the objections and observations received during the consultation, the Sub-Committee agreed not to approve the proposed new taxi rank. However, the Chair advised Mr Paxton that the Sub-Committee would be willing to consider a new proposal for Tranent.

5. CONSULTATION ON REPEAL OF PEDLARS ACTS

The Executive Director (Support Services) had submitted a report to advise the Sub-Committee of the issues raised by the ongoing Consultation on the proposed repeal of the Pedlars Acts and the proposed response on behalf of the Council.

The Legal Adviser presented the report stating that, in November 2012, a Consultation was launched jointly by the UK Government, the Scottish Government and the Northern Irish Assembly, on proposals to repeal the Pedlars Acts 1871 and 1881. The proposed changes were to comply with European Union legislation which aimed to make it easier for businesses to set up or sell their services anywhere in the EU. Under the Pedlars Acts, a trader had to have resided in the area where he intended to trade for one month before applying, be over the age of 17 and be of good character. The first two conditions were considered to be discriminatory and there was no clear test for establishing 'good character'. One consequence of the change would be that pedlars may need to obtain a street traders licence, although technically, the activity of pedlar would not fall in the ambit of street trader.

The Legal Adviser advised that the Consultation period on these proposals closed on 15 February. Due to the imminent deadline, he had outlined a response from the Council at paragraphs 3.8 and 3.9 for Members to consider.

Decision

The Sub-Committee considered the terms of the proposed response to the Consultation laid out at paragraphs 3.8 and 3.9 in the report and agreed to authorise the Corporate Legal Adviser to issue same.

6. AMENDMENT OF RESOLUTION ON PUBLIC ENTERTAINMENT LICENSING REGIME

The Executive Director (Corporate Resources) had submitted a report to the Sub-Committee of the outcome of the resumed consultation process relative to the proposed amendment to the resolution on Public Entertainment licensing in the light of recent legislation.

The Legal Adviser presented the report, advising that a report had come before the Sub-Committee on 8 March 2012 advising that various provisions as regards licensing were the subject of amendment by virtue of the Criminal Justice & Licensing (Scotland) Act 2010. With particular reference to Public Entertainment Licensing, the then current definition of place of public entertainment was 'any place where, on payment of money or money's worth, members of the public are admitted or may use

any facilities for the purposes of recreation'. The key part of that definition was the section shown underlined and effectively meant that an event which was free to enter did not require a licence under Section 42. With effect from 1 April 2012, Section 42 of the Act had been amended by deleting the words underlined above meaning that free to enter events would now be caught by the licensing regime. The Sub Committee had also agreed at their meeting in March that the categories of activities which would require to be licensed under Section 42 should be reviewed and updated to avoid charitable events being unduly penalized. The proposed wording of the amended resolution was subsequently advertised in the local press on 31 August 2012 giving a 28 day expiry for the submission of objections. A further report had been submitted to the Sub-Committee meeting on 11 October 2012 which advised of one objection to the proposals. The Sub-Committee did not accept the objections submitted but agreed that the proposed wording of the resolution be further amended to charitable activities and the numerical limit for 'small scale' events. One further objection had been received and was considered by the Sub-Committee on 13 December. As a result, the Sub-Committee had agreed to make some further alterations to the wording and the amended resolution was advertised again.

The current proposed wording, a copy of which was attached to the report, had been advertised in the local press on 11 January with a consultation period of 28 days. At the date this report was written, no further objections had been received, however, the Legal Adviser reported that one objection had since been received from North Berwick Community Council. A further late letter of comment had been received from North Berwick Rotary Club. Both letters highlighted concerns that clubs and societies would require a Public Entertainment Licence if they raised funds for charitable causes outside their organization.

The Legal Adviser advised Members that they had to decide today whether to further amend the wording of the resolution and re-advertise or to adopt the resolution as changed.

Members discussed the proposals and objections in detail and consulted the Legal adviser for guidance.

Decision

The Sub-Committee agreed to approve the proposed wording of the amended resolution, which wording was attached to this report, and authorised the Corporate Legal Adviser and such staff as she may designate to advertise the adoption of the amended wording in the local press.

7. PROPOSED AMENDMENTS TO CONDITIONS OF LICENCE – TAXI & PRIVATE HIRE

The Executive Director (Support Services) had submitted a report to advise the Sub-Committee on progress on the issues of amending licensing conditions in respect of the age of vehicles, and on the issue of new signage for private hire cars, following the decision of the Sub-Committee at the meeting on 13 December 2012.

Colin Paxton, Co-Chair of the East Lothian Taxi and Private Hire Association (ELTPHA) and Ms Sheila Dougall of Elite Private Hire were present.

The Legal Adviser advised that a report submitted to the Licensing Sub-Committee on 11 October 2012 had proposed changing the wording of certain taxi licence conditions so as to remove the words '*prima facie*' where they appeared in Condition 9, relative to the age of vehicles, as these words were considered to serve little purpose other than to add uncertainty to the particular licence condition. Removal of the wording would make it clear that vehicles would no longer be suitable for renewal of licence once they had reached the age of 6 years (or 12 in the case of custom built vehicles).

The same report had also proposed that the current electric screen light and disc used for private hire cars be placed by adhesive labels which would be affixed to the doors of vehicles which would provide a financial saving to the Council in that the proposed labels cost in the region of £3 each and the current screen lights cost nearly £40.

The taxi trade had been consulted on these proposals and a subsequent report was presented at the meeting on 13 December 2012. At this meeting, the Taxi Association requested that the matter be deferred to allow them to consult with their members on these issues.

The proposed redesign of the adhesive label for private hire cars, with the Council logo removed and in black and white rather than colour, was attached to the report.

The Chair addressed the matter of the changes to the adhesive sticker first of all and asked Ms Dougall if she was satisfied with the changes made and she agreed that it was an improvement on the original sticker design. The Chair of the ELTPHA indicated that he had no objection to the amended sticker, but enquired if the taxi trade would receive a reduction in their licence fee as the fee included the cost of a screen light. However, Mr Dagleish advised that this was not possible and explained how the costs were calculated.

In respect of Condition 9, Mr Paxton stated that the 6 year rule for non purpose built taxis would be harsh on taxi operators and pointed out that the largest producer of purpose built taxis had entered administration for the third time. Therefore, if a taxi was still in good condition, he saw no reason for it not to remain in service.

Responding to a comment from Mr Paxton, Mr Dagleish advised that the back seat measurement was not included in vehicle inspections as a vehicle could carry 3-5 passengers in the back of the taxi providing there was one seatbelt per person. The Chair advised that the reference to the length of back seat could therefore be removed from the Conditions of Fitness of Taxis and Private Hire Cars. Mr Dagleish also responded to Mr Paxton's comment that there were occasions when taxi drivers were told not to bring their vehicles back for testing. In Mr Dagleish's view, this was one person's opinion on the fitness of the vehicle and it was more satisfactory to have set criteria. He accepted there was an argument for cars being allowed to continue after 6 years and stated that the term of new education contract would be seven years. Ms Dougall indicated that she was in favour of limiting the service of non purpose built taxis to 6 years.

The Chair stated that the crucial issue was ensuring that passengers in East Lothian were carried safely.

Members discussed the terms of Condition 9 in detail, considering whether non purpose built taxis should be allowed to operate for 6 years or 7 years and if the phrase 'prima facie' should be deleted. The Chair also proposed that, for clarity, the last paragraph of Condition 9 was removed in its entirety.

Decision

The Sub-Committee considered the terms of the letter received from the ELTHA and also considered the amended signage which had been produced relative to private hire cars and agreed:

- i. unanimously to adopt the proposed adhesive label for private hire cars, as amended, in place of the current screen light; and
- ii. by a majority to approve the proposed alteration of the wording of the licence conditions relative to the age of vehicles by deleting the words '*prima facie*' and to delete the last paragraph of Condition 9.

8. TAXI & PRIVATE HIRE CAR LICENSING – PROPOSALS FOR CHANGE

The Executive Director (Support Services) had submitted a report to advise the Sub-Committee of the scope of the current Scottish Government Consultation on proposed changes to taxi and private hire car licensing. The Consultation questionnaire was attached to the report.

The Legal Adviser presented the report, advising that the Scottish Government had launched a consultation on proposals to reform taxi and private hire car licensing in November 2012 and this consultation exercise would remain open until 15 March 2013. This consultation was aimed to address concerns about the influence of organised crime on the trade and also the variability in how legislation was interpreted and enforced. He also highlighted the proposal to restructure the Booking Office requirements to remove current exclusions for businesses with fewer than four cars and with no physical 'premises'. This legislation, in particular, had been considered flawed since its inception.

The Legal Adviser also outlined the objectives of the proposals, highlighting that the onus of proof of the 'fit and proper' test would now be placed on the applicant. The Consultation did not propose new areas of licensing per se, but contained a number of questions relating to the issue of 'special event vehicles' which did not necessarily fall within the ambit of the current regime.

The Chair stated that placing the onus on taxi drivers and operators to prove that they were a fit and proper person to hold a licence was an important change. He noted that there were 30 questions in all in the questionnaire and therefore suggested that Members consider the document further in detail and email their responses directly to him within 14 days.

Decision

The Sub-Committee agreed:

- i. to consider the questions raised as part of the consultation and considered the general tenor and direction of the Council response.

- ii. to accept a further report to the next meeting of the Licensing Sub Committee with a view to approving the proposed response as formulated taking account of the views expressed relative hereto.