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Gareth Owens LL.B Barrister/Bargyfreithiwr
Head of Legal and Democratic Services
Pennaeth Gwasanaethau Cyfreithiol a Democraataidd



To: Cllr Tony Sharps (Chairman)

CS/NG

Councillors: Glyn Banks, David Cox, Alan Diskin,
Rosetta Dolphin, Ian Dunbar, Brian Dunn,
Jim Falshaw, Robin Guest, Brian Lloyd,
Hilary McGuill and Mike Reece

9 May 2014

Nicola Gittins 01352 702345
nicola.gittins@flintshire.gov.uk

Dear Sir / Madam

A meeting of the **LICENSING COMMITTEE** will be held in the **CLWYD COMMITTEE ROOM, COUNTY HALL, MOLD CH7 6NA** on **THURSDAY, 15TH MAY, 2014** at **10.00 AM** to consider the following items.

Yours faithfully

Democracy & Governance Manager

AGENDA

- 1 **APOLOGIES**
- 2 **MINUTES** (Pages 1 - 4)
To confirm as a correct record the minutes of the last meeting
- 3 **DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**
- 4 **INTENDED USE POLICY FOR HACKNEY CARRIAGES LICENSED WITHIN FLINTSHIRE** (Pages 5 - 12)
For Members to consider implementing an intended use policy in relation to any Hackney Carriage (Black Cab) vehicle licensed in Flintshire.

County Hall, Mold. CH7 6NA
Tel. 01352 702400 DX 708591 Mold 4
www.flintshire.gov.uk
Neuadd y Sir, Yr Wyddgrug. CH7 6NR
Ffôn 01352 702400 DX 708591 Mold 4
www.siryfflint.gov.uk

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Mae'r Cyngor yn croesawau gohebiaeth yn y Cymraeg neu'r Saesneg

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LICENSING COMMITTEE **7 NOVEMBER 2013**

Minutes of the meeting of the Licensing Committee of Flintshire County Council held at County Hall, Mold on Thursday 7 November 2013.

PRESENT: Councillor Tony Sharps (Chairman)

Councillors: David Cox, Ian Dunbar, Jim Falshaw, Brian Lloyd and Mike Reece

APOLOGIES:

Councillors Alan Diskin, Rosetta Dolphin and Brian Dunn

IN ATTENDANCE:

Democracy and Governance Manager, Team Leader, Licensing and Team Manager, Committee Services

1. MINUTES

The minutes of the meeting held on 9 May 2013 had been circulated with the agenda.

RESOLVED:

That the minutes be approved as a correct record and signed by the Chair.

2. APPOINTMENT OF VICE-CHAIR

Councillor Mike Reece proposed Councillor David Cox as Vice-Chair which was duly seconded by Councillor Ian Dunbar.

RESOLVED:

That Councillor David Cox be appointed as Vice Chair.

3. DECLARATIONS OF INTEREST

No declarations of interest were made.

4. PERSONAL ALCOHOL LICENCES

The Team Leader, Licensing introduced the report which provided information on a Home Office consultation in relation to Personal Alcohol Licences under the Licensing Act 2003.

RESOLVED:

That the Home Office proposals on Personal Licences be noted.

5. **SCRAP METAL DEALERS ACT 2013**

The Team Leader, Licensing introduced the report which provided details of the Scrap Metal Dealers Act 2013 and informed Members of the role of the Licensing Committee in determining whether applicants were suitable persons.

The new Act required scrap metal dealers to be assessed for suitability before licenses were granted or renewed. It also gave local authorities the power to impose conditions on licenses, to revoke licenses, and to close down unauthorised sites.

The Act created two different types of scrap metal licence – either a Site Licence or a Collectors Licence. Mobile collectors must be separately licensed in each Local Authority area in which they operated.

RESOLVED:

That the new Scrap Metal Dealers legislation and the role of the Licensing Committee in determining certain applications be noted.

6. **REVIEW OF THE CURRENT ARRANGEMENTS FOR NOMINATING GARAGES FOR THE TESTING OF PRIVATE HIRE AND HACKNEY CARRIAGE VEHICLES**

The Team Leader, Licensing, introduced the report which proposed changes to the current regime for nominating garages to test Private Hire and Hackney Carriage Vehicles on behalf of Flintshire County Council.

It was agreed at Executive in June 2009 that the Licensing Committee would periodically oversee the effective operation of the scheme, including consideration of future changes. The scheme had been effective for four years and there were 17 nominated testing stations.

At a recent Private Hire Operator Forum, the subject of vehicle testing was raised. Some operators raised concerns that some operators of Private Hire Vehicles were able to test their vehicles at nominated testing stations which were run by family members, partners or acquaintances. It was felt that it may be a conflict of interest, in particular in relation to payment.

Nothing in the scheme addressed this and it was considered by the Licensing Section that it may be beneficial to include a policy position to safeguard against such potential conflicts of interest.

Two affected businesses were contacted by letter to explain that it was the intention to bring the matter before the Licensing Committee and a response letter referring to both businesses was attached as Appendix C to the report.

The Chair had given prior approval for each of the two relevant businesses to address the Committee for a maximum of five minutes per person.

The Chair invited Ms Wendy Smith of Holywell Cars, Mr David Davies of Lodge Farm Workshops and MOT and their legal representative, Mr Tim Culpin of Aaron & Partners LLLP Solicitors to the table. Mr Culpin explained that he would address the Committee on behalf of Ms Smith and Mr Davies.

Ms Smith and Mr Davies, who co-habited, felt that the adoption of the recommendation would have a significant and serious adverse affect on both of their businesses.

Mr Davies had been an authorised taxi and private hire tester for Flintshire County Council since 2009 and carried out testing for a number of other local operators and taxi/private hire owner/drivers. It was believed that he offered a unique service to all of his customers in that he would carry out his services at a time to suit them, not just during normal working hours. This provided a distinct advantage to all the businesses who used his services, not just Ms Smith's business.

Since Ms Smith had acquired Holywell Cars, Mr Davies had carried out 18 six monthly MOT tests on her vehicles and had failed Holywell Cars on 3 occasions. Mr Culpin referred the Committee to the paperwork he had distributed which provided details of those tests. Those records also showed that all of the tests had been paid for.

Both businesses were subject to statutory regulation. Vehicle and Operator Services Agency (VOSA's) regulation was strict and the consequences of improper activity were severe. Similarly, Flintshire County Council had inspectors to ensure that taxi/private hire operators were complying with the requirements of their licences and operators would risk losing those licences if any improper conduct was found. VOSA had no issues with arrangements such as those that were being carried out and were quite content with testers carrying out tests on their own vehicles.

Mr Culpin suggested that a voluntary requirement for disclosure of interests and connections could be sufficient so that appropriate checks could be carried out.

The Team Leader, Licensing read out a file note taken by the Community Protection Manager which said that during a telephone conversation with Ms Smith, he had advised her that nothing prevented such an arrangement but there was a clear conflict of interest and the procedure would be looked into in the future.

In response to a question, the Team Leader, Licensing, explained that the testing station owned by Mr Davies was not the only one in Flintshire that operated an out of hours service. Also, there were other garages in North

Flintshire that were able to carry out MOT tests for Private Hire and Hackney Carriage vehicles.

The Chair thanked Mr Culpin for addressing the Committee and adjourned the meeting. Mr Culpin, Ms Smith, Mr Davies and the Team Leader, Licensing left the room.

Mr Culpin, Ms Smith, Mr Davies and the Team Leader, Licensing were invited back into the room and the meeting was re-convened.

RESOLVED:

- (a) That voluntary declarations of interests be made to Flintshire County Council by operators of Private Hire Vehicles who had their vehicles tested by testing stations which were run by family members, partners or acquaintances with appropriate checks being carried out by Flintshire County Council;
- (b) That any potential new applicant to the scheme is only considered for inclusion on the scheme at one period of the year (February);
- (c) That the Team Leader, Licensing, (in consultation with the Community Protection Manager) may change the Service Level Agreement from time to time as appropriate; and
- (d) That the continuation of approving only those Testing Stations who have been established for a minimum of three years and who meet the remaining criteria is appropriate.

7. MEMBERS OF THE PRESS AND PUBLIC IN ATTENDANCE

There were three members of the public present.

(The meeting commenced at 10.00 a.m. and ended at 11.30 a.m.)

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Chairman

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **LICENSING COMMITTEE**

DATE: **THURSDAY, 15 MAY 2014**

REPORT BY: **DIRECTOR OF ENVIRONMENT**

SUBJECT: **INTENDED USE POLICY FOR HACKNEY CARRIAGES LICENSED WITHIN FLINTSHIRE**

1.00 PURPOSE OF REPORT

- 1.01** To request that Members consider the implementation of an Intended Use Policy for Hackney Carriage applications that will apply to:
- New Hackney Carriage Applications
 - Renewal of existing Hackney Carriage Licenses
 - Transfer of existing Hackney Carriage Licenses

2.00 BACKGROUND

- 2.01** It has previously been reported to Members that the Authority has licensed a number of applications for Hackney Carriages from persons living outside of Flintshire, and still continue to receive a significant number of applications.
- 2.02** Recent High Court cases have deemed that it is entirely lawful for a hackney carriage licensed by one authority to undertake pre booked hiring's (private hire) outside of that authority area. This would mean that hackney carriages licensed within Flintshire could be used for private hire bookings for operators who are based outside of the Flintshire area. Also, hackney carriage vehicles from other authorities which may not meet Flintshire's vehicle specification could be used as private hire vehicles in the Flintshire area.
- 2.03** This Authority does not currently have regard to whether an applicant for a hackney carriage licence or the proprietor of a hackney carriage vehicle intends to work within Flintshire or if the vehicle will be used predominantly for the purpose of private hire work outside of Flintshire.
- 2.04** Whilst the current situation is not unlawful, it is not ideal from an enforcement point of view for vehicles to be operating outside of the local area where they are licensed
- 2.05** Monitoring of licensed vehicles is a routine part of the taxi licensing function and ensures that licensed vehicles are operating in compliance with the Authority's licence conditions. Such monitoring is

often undertaken jointly with colleagues in North Wales Police or with VOSA who are able to assess the roadworthiness of the vehicle, thereby promoting the safety of the public travelling in licensed vehicles.

2.06 Flintshire County Council was nominated a 'First Phase Authority' under the Disability Discrimination Act. Therefore all our hackney carriage vehicles must be purpose built or a specialist conversion and must be provide full disabled access. Many neighbouring Authorities do not operate such a specialist fleet and licence ordinary saloon cars as hackney carriages.

2.07 In addition to the above, there are enforcement issues where licensed vehicles predominately operate outside of the area where they are licensed. There is the temptation to unlawfully ply for hire and this is an issue for that authority.

3.00 CONSIDERATIONS

3.01 An Intended Use Policy for Hackney Carriages is proposed (see Appendix A). The effect of the policy would be that for the following types of application:

- New Hackney Carriage Licence
- Renewal of Hackney Carriage Licence
- Transfer of a Hackney Carriage Licence

The applicant would need to indicate on the application form whether they intended to predominantly operate in Flintshire.

3.02 Where the applicant indicates that the vehicle will not operate within Flintshire, careful consideration will be given to the application. For vehicles that are licensed, if it is believed that the vehicle is not operating predominantly in Flintshire, then an investigation will take place and where it is determined that the vehicle is not operating within the policy then there will be a presumption that the licence will be reviewed. Each application will always be dealt with on its individual merits but the policy will give an indication to applicants of the matters that the licensing authority will take into consideration.

3.03 Delegated powers would fall to the Licensing Team Leader or the Community Protection Manager, however, it is proposed that any decision to proceed with formal action should also be brought before the Licensing Sub Committee for final determination.

3.04 The basis of this Policy was devised and created by the Directors of Public Protection Wales Licensing Technical Panel, and all the Wales authorities were asked to contribute.

3.05 Neighbouring authorities within Wales are considering implementation of this policy. Neighbouring Authorities in England are also considering implementation of a similar policy.

4.00 RECOMMENDATIONS

- 4.01 That Members agree to implement the proposed Intended Use Policy
- 4.02 That Members agree to delegate to the Licensing Team the power to consider and determine a licence where the applicant has indicated that they do not propose to operate predominantly in Flintshire.
- 4.03 That Members agree to delegate to the Licensing Team the power to suspend or revoke a licence where it has been deemed that the Hackney Carriage is not being used predominantly within Flintshire, before a Licensing Sub Committee considers the matter before a final determination.

5.00 FINANCIAL IMPLICATIONS

- 5.01 Any applicant or licence holder has the right of appeal to the refusal, suspension or revocation of a licence which may involve a cost to the authority.

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 None

11.00 CONSULTATION UNDERTAKEN

- 11.01 None

12.00 APPENDICES

- 12.01 Appendix A – Proposed Intended Use Policy

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985
BACKGROUND DOCUMENTS

Local Government (Miscellaneous Provisions) Act 1976

Contact Officer: Gemma Potter

Telephone: 01352 703371

Email: gemma.potter@flintshire.gov.uk

FLINTSHIRE COUNTY COUNCIL

INTENDED USE POLICY FOR THE LICENSING OF HACKNEY CARRIAGES

DATE: APRIL 2014

Applications for the new grant of a hackney carriage licence

Applicants for new licences will be expected to demonstrate a bona fide intention to ply for hire within Flintshire under the terms of the licence for which an application is being made.

There will be a presumption that applicants who do not intend to entirely or predominantly ply for hire within Flintshire will not be granted a hackney carriage licence authorising them to do so. Each application will be decided on its merits.

Even where the applicant intends to ply for hire entirely or predominantly in Flintshire, if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular application, there will be a presumption that the application will be refused.

Applications for the renewal of a hackney carriage licence

Section 60 of Local Government (Miscellaneous Provisions) Act 1976 also gives the Council a broad discretion to refuse to renew a licence for any reasonable cause and this intended use policy will also apply for renewals in the same way as for the grant of the licence. Each application will be decided on its merits.

Applications for the transfer of a hackney carriage licence

Should the hackney carriage licence be transferred to another proprietor during the term of the licence, the new proprietor will be asked to inform the Council whether he has a bona fide intention to use the vehicle to ply for hire within Flintshire. New proprietors should note the obligation under section 73 of the Local Government (Miscellaneous Provisions) Act 1976 to give to an authorised officer information which may reasonably be required by him for the purpose of carrying out his functions under the legislation. Where there is a failure to provide the requested information, the Council will give serious consideration to exercising its powers of suspension of the licence under section 60 of the 1976 Act until such information is forthcoming, in addition to its powers under section 73.

New proprietors of licensed hackney carriages will be expected to have a bona fide intention to ply for hire within Flintshire under the terms of the licence in respect of the vehicle being transferred.

If the new proprietor of a licensed hackney carriage is found to have no intention to ply for hire entirely or predominantly within Flintshire and/or intends to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular case, consideration will be given (either at renewal or earlier) to the suspension or

revocation of the licence under section 60 of the Local Government (Miscellaneous Provisions) Act 1976. Where the new proprietor proposes to operate remotely from the administrative area of Flintshire there will be a presumption that his licence will be revoked. Each case will however be decided on its merits.

Applications for the replacement of a hackney carriage licence

When a proprietor replaces a licensed vehicle, applicants seeking the grant of a hackney carriage licence for a vehicle intended to replace another licensed vehicle he will be asked to inform the Council of their intended use of the vehicle. There will be a presumption that applicants who no longer intend to ply for hire entirely or predominantly within Flintshire will not have the new hackney carriage licence granted. Even where the applicant intends to ply for hire entirely or predominantly in Flintshire if the intention is to trade in another authority's area also for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) then, subject to the merits of the particular case, there will be a presumption that the application will be refused.

Where a licence has been granted under the terms that the applicant intends to ply for hire entirely or predominantly within Flintshire but is subsequently found not to be plying for hire entirely or predominantly in Flintshire and/or to be trading in another authority's area for a substantial amount of time (and it appears that the purpose of the legislation and public safety will be compromised) there will be a presumption that the licence will be revoked.

Each application will be decided on its merits. However the presumptions that intended use is to ply for hire entirely or predominantly within Flintshire will be rebuttable in exceptional circumstances. Whilst it is neither possible nor prudent to draw up a list of what might amount to exceptional circumstances, an applicant who claims that exceptional circumstances exist will be expected to be able to satisfy the Council that it would not compromise the purposes of the legislation or compromise public safety if the licence were granted, renewed or if were not suspended or revoked as the case may be.

Supplementary Note - Intended Use Policy

Flintshire Council wishes to ensure that applications for the grant of hackney carriage licences are determined in accordance with the guidance given by the High Court in its judgment, and the Declaration made in the case of Newcastle City Council v Berwick upon Tweed Council [2008].

The Council is required to register the name of the new proprietor of a vehicle. It seems to the Council also to open up an obvious route to circumvent the decision of the High Court, unless precautionary steps are taken. It is intended to put the Council in a position to respond responsibly to the transfer of a Flintshire hackney carriage into the name of someone who operates outside the Flintshire area or remotely from it.

Unless there has been a change in the proprietor's intentions with regard to plying for hire within the administrative area of Flintshire , there should be no reason why he/she should not be granted a licence for a replacement vehicle. On the other hand, an applicant who obtained the first licence on the expressed intention of plying for hire entirely or predominantly within the administrative area of Flintshire, and who on application to replace that vehicle with another discloses that he/she no longer so intends, effectively engages the presumption against grant that is mentioned earlier.