

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on 26 July 2004.

PRESENT: Councillor B Taylor (Chair); Councillors Biswas, Heath, J A Jones, Lancaster, Regan, Rogers, P Thompson and A E Ward.

OFFICIALS: M Braithwaite, T Hodgkinson, L Patterson, P Ross and K Wilson.

****Also In Attendance:** M Nevison and K Reeve, Cleveland Police.

**** APOLOGIES FOR ABSENCE** were submitted on behalf of Councillors J Jones, J A Jones, Regan and the Cleveland Fire Officer's representative.

**** DECLARATIONS OF INTEREST**

At this point in the meeting Councillor Regan declared a personal/prejudicial interest in the review at Ref:36/04 as the driver was known to him.

**** MINUTES**

The minutes of the previous meetings held on 23 June and 5 July 2004 were taken as read and approved as correct records subject to the addition of Councillor Clark's apologies for non attendance at the meeting on 23 June 2004.

SAFETY OF SPORTS GROUNDS ACT – RENEWAL OF SAFETY CERTIFICATE – RIVERSIDE STADIUM 2004/5

The Principal Licensing Officer presented a report on behalf of the Director of Legal and Democratic Services seeking approval to re-issue the General Safety Certificate for the Riverside Stadium for the football season 2004/2005 with a capacity for 35,043 spectators.

The Safety of Sports Grounds Act 1975 stated that a sports ground accommodating more than 10,000 spectators required a safety certificate containing such terms and conditions as the local authority considered necessary or expedient to secure reasonable safety at the sports ground.

The matter had been considered by the Safety Advisory Group on 16 July 2004 where it was recommended that the Safety Certificate be re-issued as outlined in the report.

ORDERED that approval be given to re-issue the General Safety Certificate in respect of the Riverside Stadium for the football season 2004/2005 with a spectator capacity of up to 35,043.

APPLICATION FOR AMUSEMENT WITH PRIZES PERMIT – TRAFALGAR LEISURE LTD – 34 LINTHORPE ROAD, MIDDLESBROUGH

The Principal Licensing Officer presented a report of the Head of Community Protection Service to request consideration of an application under Section 34 (5E) of the Gaming Act 1968 submitted by Trafalgar Leisure Limited. The application for an Amusement with Prizes Permit was in respect of an amusement arcade at premises at 34 Linthorpe Road, Middlesbrough, formerly known as the Shakespeare public house.

The report provided background information on the Gaming Act 1968 and associated regulations and Council established guidance for this type of activity.

A full consultation exercise had been undertaken and planning and listed building control consents had been obtained for use of the premises as an amusement arcade. No objections had been received from the Police or any other technical consultee. One objection had been received from Mincoffs Solicitors on behalf of Leisure Promotions Ltd. This was based on the saturation of licensed premises within the Middlesbrough area and the location of the premises to those operated by Leisure Promotions Ltd. A copy of the letter of objection was attached as an appendix to the report.

Details of the interview undertaken with Mr Sam Hamadi, the company's managing director, by the Principal Licensing Officer were summarised in the report which also included details of the company's management and operating proposals.

Mr Hamadi was in attendance at the meeting and confirmed the accuracy of the submitted report. He reiterated that although persons under the age of 18 would be permitted on the premises when accompanied by an adult, they would not be permitted to play any machines on the premises.

Mr J Morran a barrister acting on behalf of the objectors was also in attendance, accompanied by Mr Hughes, a representative of Leisure Promotions Limited and made representations on behalf the objectors based principally on the level of demand within the area. He stated that no evidence had been shown of a gap in the market.

Mr Morran contended that the guidance previously approved by the Council in 1992 to restrict the number of licensed premises to 11 was now felt to be in need of review. He stated that restrictions on the number of premises had little effect on the number of machines in operation as outlets simply expended their operations within the same premises. It was not sufficient to award the licence based on the number of licences currently granted. Other factors should be taken into account, e.g. the company's social responsibilities to ensure that young people did not use the machines; that the machines should not be overused leading to possible addiction and thereby allowing standards to slip. In taking steps to fit out the premises prior to the grant of the licence there was a presumption by the applicant that the licence would be granted. This was something his clients would not undertake to do unless the licence had already been granted and an assessment carried out to determine whether there was unmet demand.

He suggested that the Committee's ability to revoke the licence and restrict demand on its renewal in three years time would be far more limited than at present and emphasised the need for the Committee to come to the correct decision from the start. It was also felt that the applicants were relatively inexperienced in operating amusement arcades having only been in operation at their Newcastle premises for a period of 18 months. Mr Morran made reference to a recent court case which he felt supported his client's case. The Council's legal representative having read the details of the case referred to felt that the arguments raised in the judgement did not apply to this case.

The applicant was invited to speak in support of the application, responded to the objections raised and answered Members' questions. Responding to the comment made regarding the company's lack of experience in this field Mr Hamadi stated that there had been no problems at its Newcastle operation during its period of operation and strongly disagreed with the comment. The company had met with representatives of BACTA which was a voluntary regulatory body for the trade and had attended a number of trade shows over the last 2 years. It was felt that the main point of the objection was to restrict competition. The objectors decision to decline to purchase the premises themselves and extend their current operation was due to the fact that they would be unable to adapt the premises, being a listed building, to comply with their corporate identity.

It was confirmed that there were no further questions and the applicant, objectors and all officers, other than the Council's Legal Services and Members' Office representatives, withdrew whilst the Committee determined the application.

Subsequently all interested parties returned and the Chair announced the Committee's decision.

ORDERED that the Amusement with Prizes Permit under Section 34 (5E) of the Gaming Act 1968 be granted to Trafalgar Leisure Limited for an amusement arcade at 34 Linthorpe Road, Middlesbrough.

REVIEW – HACKNEY CARRIAGE/PRIVATE HIRE CONDITIONS AND POLICIES

The Head of Community Protection Service submitted a report requesting the Committee to revisit the Council's conditions and policies in relation to the licensing of hackney carriages, private hire vehicles, drivers and operators in the light of representations and application from members of the Trade. Members at a meeting of the Committee held on 15 December 2003 received applications for exemption from the Council's conditions on prohibiting advertising on vehicles. The matter was deferred pending its future consideration by the Executive and was considered at its meeting on 8 June 2004. This Committee at its meeting on 5 July 2004 then considered what would be deemed to be unsuitable in terms of advertising. In addition to conditions on advertising the Committee had agreed to review all other licensing conditions and policies and carry out consultation with the Trade. The summary of the responses received in relation to the following policies were set out in the report together with the officers comments thereon:

- Swivel Seats in saloon hackney carriages
- Fare Tariff – Increase from 11pm to 6am daily
- No Smoking
- Age of Vehicle
- Appearance of Hackney Carriage
- Convictions
- Restriction of Hackney Carriage Numbers
- Byelaws relating to the use of Hackney Carriage Ranks
- Driving Standards Agency (DSA) Test

In addition to the above, the representations were also made in regard to the following issues which were either not licensing issues or were matters regulated by legislation and which the Committee were not able to amend:

- Use of bus lanes
- Use of hackney carriage by unlicensed persons
- Refusal to carry passengers

ORDERED as follows:

1. That the representations made by the Trade be noted and that the current conditions and policies in relation to the matters referred to above be retained
2. That as no change has been made to the current conditions and policies the matter does not require referral to the Council's Executive.

**** EXCLUSION – PRESS – PUBLIC**

ORDERED that the press and public be excluded from the meeting for the following three Agenda items on the grounds that they involve the likely disclosure of exempt information as defined in Paragraphs 4 and 7 of Schedule 12A of the Local Government Act 1972.

**** DECLARATION OF INTEREST**

Councillor Biswas declared a personal/prejudicial interest in the following case as the operator was known to him and left the meeting during consideration of the matter.

REVIEW - PRIVATE HIRE OPERATOR LICENCE NO. 6 – REF NO. 32/04

The Head of Community Protection Service submitted an exempt report in connection with a review of Private Hire Operator Licence No. 6, Ref: 32/04, where circumstances had arisen which required special consideration by the Committee.

The Principal Licensing Officer presented the report which set out the circumstances of the case. The report indicated that as the operator had failed to attend for interview on a number of occasions the detail in the report was based upon the Council's own records. The operator had been granted his licence following consideration of 2 previous matters that had occurred in March and April 2003. A further offence of permitting the operation of an unlicensed private hire vehicle by an unlicensed private hire driver on 4 June 2004, had now been committed and the driver subsequently convicted and fined for the offence.

Two typographical errors in the report were corrected (1) the date of conviction being 11.06.04 not 11.06.03 and (2) the operator had been invited for interview on 5.7.04 not 5.4.04 as shown in the report.

The operator confirmed that the report was an accurate reflection of the facts and stated that he had been convicted of the offence and had now paid the fines imposed. He stated that he was not aware of any other outstanding offences. He apologised to the Committee for his actions and referred to his letter of apology attached as an appendix to the report.

He confirmed to the Chair that he had no further convictions and was afforded the opportunity of making representations in support of his case/answer questions.

It was confirmed that there were no further questions and all officers, other than the Council's Legal Services and Members' Office representatives, withdrew whilst the Committee determined the application.

Subsequently all interested parties returned and the Chair announced the Committee's decision.

ORDERED that Private Hire Operator Licence No. 6, be revoked as the operator was not considered to be a fit and proper person to hold a licence for the following reasons:

1. He had been involved in 2 incidents involving licensing offences when he was first in charge of the firm and had been warned by the Licensing Committee about his future behaviour.
2. He continued to commit offences (operating an unlicensed vehicle & driver) and was convicted of those offences on 11 June 2004.
3. He had attempted to mislead Council officers, in particular by pretending to be someone other than himself when officers contacted him.
4. He had failed to attend for interviews.

REVIEW – COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER LICENCE NO. 109 – REF: 33/04

The Head of Community Protection Service submitted an exempt report in connection with the review of combined Hackney Carriage and Private Hire Driver Licence, No 109, Ref: 33/04 where circumstances had come to light which required special consideration by the Committee.

The Senior Licensing Officer presented the report which set out the circumstances of the case relating to an offence of plying for hire and having no insurance. The driver had submitted a letter to the Licensing office asking that the matter be dealt with in his absence. He had apologised for the offence, offered assurances that there would be no repeat of that type of offence and confirmed that he was paying off his fines and costs.

Officers of the Council, other than representatives of the Council's Legal Services and the Members' Office withdrew whilst Members determined the review.

Subsequently all returned to the meeting and the Chair announced the Committee's decision.

ORDERED that no action be taken in respect of Combined Hackney Carriage and Private Hire Driver Licence No 38, Ref: 31/04 but that the driver be given a very strong warning as to his future conduct.

REVIEW - PRIVATE HIRE DRIVER LICENCE NO. 234 – REF NO. 34/04

ORDERED that in view of the absence of the licence holder, the matter be deferred to the meeting scheduled for 29 July 2004 to allow him a further opportunity to attend.

REVIEW - PRIVATE HIRE DRIVER LICENCE NO. 17 – REF NO. 35/04

The Head of Community Protection Service submitted an exempt report in connection with an application for a Private Hire Driver Licence where circumstances had arisen which required special consideration by the Committee. The matter had been referred to the Committee due to a further offence of speeding of which the driver had been convicted.

The driver had previously been before the Committee on two occasions for various offences. He had been permitted to retain his licence on those occasions but had been warned as to his future conduct.

The Senior Licensing Officer presented the report, which set out the circumstances of the case. The driver confirmed he had received a copy of the report and had been invited to attend the meeting to present his views/answer Members' questions

The driver confirmed that the contents the report were an accurate representation of the facts, confirmed that he had no other outstanding offences and had paid outstanding fines. The driver was offered the opportunity of speaking in support of his case and answered Members' questions. It was confirmed that there were no further questions.

The driver and officers of the Council, other than representatives of the Council's Legal Services and Members' Office, withdrew whilst the Committee determined the application.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

ORDERED that Private Hire Driver Licence No. 17 be suspended until such time as the driver successfully undertakes the Driver Improvement Scheme for the following reasons:

- 1 Due to his repeated motoring convictions for speeding and other matters.
2. That the Committee had on two previous occasions, warned the driver about his conduct regarding such matters.

**** DECLARATION OF INTEREST**

Councillor Regan declared a person/prejudicial interest in the following matter as the driver was known to him and left for the remainder of the meeting.

REVIEW - PRIVATE HIRE DRIVER LICENCE NO. 142 – REF NO. 36/04

The Head of Community Protection Service submitted an exempt report in connection with a review of Private Hire Driver Licence No. 142 where circumstances had arisen which required special consideration by the Committee. The matter had been referred to Members due to the driver being convicted of a further motoring offence and with 4 licensing and 1 insurance offences arising from 4 separate incidents since the grant of the licence in December 1999. At that time the Committee, having taken into consideration 2 convictions for speeding and 1 motoring conviction, granted the licence with a warning about future motoring convictions. The report also showed that the driver had wished to draw attention to 1 further matter involving the employment of an unlicensed private hire driver, driving one of his licensed vehicles without insurance.

The applicant confirmed he had received a copy of the report and had been invited to attend the meeting to present his views/answer Members' questions.

The Senior Licensing Officer presented the report, which set out the circumstances of the case.

The applicant confirmed that the contents the report were an accurate representation of the facts and was offered the opportunity of speaking in support of his case. He then answered questions from Members' and officers.

It was confirmed that there were no further questions and the applicant, officers of the Council, other than representatives of the Council's Legal Services and Members' Office, withdrew whilst the Committee determined the application. Prior to that determination the above participants had been asked to return to the meeting in order to allow Members to clarify the situation regarding the Driver's position as owner of a number of other licensed vehicles.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

ORDERED that Private Hire Driver Licence No. 142 be revoked on the grounds that he was not considered to be a fit and proper person to hold a licence for the following reasons:

Due to his continuous disregard for licensing law in that

1. He had permitted the use of an unlicensed Private Hire vehicle on 2 occasions.
2. He had employed an unlicensed driver on 2 occasions and on the last occasion permitted the vehicle to be driven by someone who was not insured to drive it.

**** SUSPENSION OF COUNCIL PROCEDURE RULES**

As at this point in the meeting the time restriction set out at Council Procedure Rule No.7, limiting the duration of the meeting to a maximum of three hours had been reached. Members were requested to determine whether the meeting should adjourn to a future date or continue and deal with the remainder of the business as outlined in the agenda.

ORDERED that Council Procedure Rule No.7 be waived to enable the meeting to continue and deal remaining business.

REVIEW - PRIVATE HIRE DRIVER LICENCE NO. 120 – REF NO. 37/04

The Head of Community Protection Service submitted an exempt report in connection with a review of Private Hire Driver Licence No.120, Ref: 37/04, where circumstances had arisen which required special consideration by the Committee. The Chair outlined the procedure to be followed during the meeting.

The Senior Licensing Officer presented the report which set out the circumstances of the case which related to an offence of driving a privately owned vehicle without the relevant insurance.

The driver confirmed that he had received a copy of the report and had been invited to attend the meeting to present his views/answer questions. He confirmed that the report was an accurate representation of the facts; that he had no other offences outstanding and apologised for his actions.

It was confirmed that there were no further questions and the driver and officers of the Council, other than representatives of the Council's Legal Services and Members' Office, withdrew whilst the Committee determined the application.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

ORDERED as follows:-

1. That Private Hire Driver Licence No 120, Ref.No. 37/04 be retained and the driver be given a warning as to his future conduct.

2. That the driver be required to undertake the Driver Improvement Scheme prior to future renewal of the licence.