



General Licensing and Registration Committee

Date Thursday 13 July 2017
Time 10.00 am
Venue Committee Room 2, County Hall, Durham

Business

Part A

1. Apologies for Absence
2. Declarations of Interest (if any)
3. The Minutes of the Meeting held on 12 January 2017 (Pages 3 - 6)
4. Licensing (Policy) - Fee Setting for Sex Establishments and Sexual Entertainment Venues (Pages 7 - 10)
5. Such other business as, in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Clare Pattinson

Interim Head of Legal and Democratic Services

County Hall
Durham
5 July 2017

To: **The Members of the General Licensing and Registration Committee**

Councillor C Carr (Chair)
Councillor J Maitland (Vice-Chair)

Councillors P Atkinson, A Batey, D Bell, J Bell, J Blakey, D Brown, L Brown, M Clarke, J Considine, P Crathorne, G Darkes, S Durham, C Hampson, D Hicks, A Hopgood, K Liddell, L Marshall, I McLean, A Reed, J Stephenson, D Stoker, A Surtees, T Tucker, A Willis and M Wilson

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DURHAM COUNTY COUNCIL

At a Meeting of **General Licensing and Registration Committee** held in Committee Room 2, County Hall, Durham on **Thursday 12 January 2017 at 10.00 am**

Present:

Councillor C Carr (Chairman)

Members of the Committee:

Councillors D Bell, P Crathorne, B Glass, B Graham, O Gunn, C Hampson, A Hopgood, I Jewell, B Kellett, L Marshall, P May, D Stoker and A Willis

Also Present:

C Rudman – Licensing Manager
G Proud – Solicitor (Litigation)

1 Apologies for Absence

Apologies for absence were received from Councillors J Maitland, A Batey, J Bell, J Blakey, I Geldard, J Hart, D Hicks, K Hopper, J Lee, T Nearney and A Surtees.

2 Declarations of Interest

Councillor Carr advised that he was a member of the Combined Authority for County Durham and Darlington, and a Director of County Durham and Darlington Fire and Rescue Community Interest Company.

Councillors D Bell, B Glass, B Graham, L Marshall, D Stoker and A Willis advised that they were members of the Combined Fire Authority for County Durham and Darlington.

3 Minutes

The Minutes of the Special meeting held on 14 November 2016 were agreed as a correct record and were signed by the Chairman.

4 Hackney Carriage and Private Hire Driver Assessments

The Committee considered a report of the Head of Environment, Health and Consumer Protection which requested the Committee to consider proposals for the revision of the Council's Hackney Carriage and Private Hire Licensing Policy in connection with the existing requirement for new applicants to pass the DVSA hackney carriage and private hire (taxi) driver assessment (for copy see file of Minutes).

Members were informed that in a letter dated 31 August 2016 the DVSA had announced that a decision had been made to withdraw the provision of taxi driver assessments with effect from 31 December 2016. This required an amendment to the wording of the Policy, and as there were no available driver assessment appointments in the period up to the end of December 2016 it had been agreed following consultation with the Portfolio Holder, the Chair and Vice-Chair of General Licensing and Registration Committee and the Chairs of the General Licensing and Registration Sub-Committees, that the requirement be temporarily suspended.

This allowed some new applicants to be granted a licence without an assessment but the drivers had been advised that they would be required to pass an alternative assessment on renewal of their licences. The Licensing Manager advised that between 10 and 15 drivers had been granted licences in the period since the requirement had been suspended.

Councillor May expressed concern that there were taxi drivers who were operating without having completed a driver assessment which, in his own experience as a former taxi driver, he considered to be important. Councillor Glass made the comment that the Licensing Policy served to protect the public and was concerned at the length of time taken following receipt of the letter from the DVSA to the matter being reported to Committee. He was relieved therefore that only a relatively small number of drivers had been licensed in the period but noted that the situation needed to be rectified as quickly as possible.

Councillor Hopgood expressed strong concerns that the DVSA letter had been received on 3 September 2016 but that consultation had not commenced until November 2016. The Member was informed of the decision-making process for approval to commence consultation and to the proposed policy changes. The report had been submitted to Committee as early as possible following the conclusion of the consultation period. Councillor Hopgood was of the view that this was unacceptable given the implications of delaying the change to the Policy, and that it should be possible to expedite a matter of such urgency by calling a Special meeting.

The views of Councillor Hopgood were shared by other Members of the Committee and the Chairman suggested that these concerns be referred to the Head of Legal and Democratic Services for consideration.

Following a comment from Councillor Stoker the Solicitor (Litigation) explained that, subject to Member approval, with effect from 25 January 2017 all new applicants would be expected to undertake a driver assessment. It was suggested that with immediate effect and until the Policy was adopted new applicants be informed that they would be required to sit the test. For those drivers who were granted a licence in the period of suspension Members suggested that they be given three months to complete the assessment. The Members were informed by the Licensing Manager that the licence holders had already been advised that an assessment would be required at the time their licences were due for renewal. The drivers could be encouraged to complete the test within the timeframe proposed, however the Licensing Manager advised that it may be difficult to compel the drivers to undertake an assessment before their licence renewals, given that they had been

deemed to be fit and proper persons to hold hackney carriage and private hire driver licences.

Following a question from Councillor Jewell the Licensing Manager advised that unlike licences for commercial vehicles there was no requirement for the test to be re-taken after a specified period of time, unless it was deemed necessary to require a driver to do so; for example where a relevant offence had been committed and a General Licensing and Registration Sub-Committee considered this to be an appropriate course of action.

Members discussed the proposal to use a list of authorised providers, and the response from a consultee which suggested that the work be undertaken by the Fire and Rescue Service. In response to comments and questions from Members the Licensing Manager advised that providers must be driving instructors that were accredited by the DVSA. It was beneficial to have a list of authorised providers because of potential capacity issues; a single provider may not have the capacity to respond to a high volume of assessments within a reasonable timeframe.

Councillor Hopgood made the point that the new applicants licensed in the period could not have undertaken a test because the service had been withdrawn and there were no time slots remaining up to the end of December 2016. The Member was therefore of the view that the licences should not have been granted when the Policy required drivers to pass a driver assessment. The Licensing Manager suggested that this would have delayed the processing of new applications for an unacceptable length of time and may be considered unreasonable.

Councillor May stressed the importance of maintaining a high standard of taxi drivers in County Durham, and asked if consideration should be given to the assessment of those drivers who had not previously been required to take a test because they were licensed prior to this provision in the Policy being implemented. The Licensing Manager advised that this could be explored as part of the next Policy review in 2018.

Following lengthy discussion it was **Resolved:**

That to enable the suspended requirement for taxi driving assessment testing of applicants to be reinstated for the benefit of public safety, the proposals concerning the revision of the taxi policy in connection with taxi driver assessments be supported and recommended to Council for adoption on 25 January 2017.

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General Licensing and Registration Committee

13th July 2017

Licensing (Policy) – Fee Setting for Sex Establishments and Sexual Entertainment Venues



Report of Jane Robinson, Corporate Director, Adults and Health Services

Purpose of the Report

- 1 The General Licensing and Registration Committee is asked to adopt on behalf of the Council the proposed new fees relating to the licensing of sex establishments and sexual entertainment venues.

Background

- 2 In March 2011, Durham County Council resolved to adopt Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982. This enabled the Council to licence all forms of sex establishments including sex shops, sex cinemas and sexual entertainment venues (SEV).
- 3 The annual fees for such licences must be determined each year by a duly authorised Licensing Committee in accordance with the Local Government (Miscellaneous Provisions) Act 1982.
- 4 The current fee for Sexual Entertainment Venues is £3517.
- 5 The EU Service Directive that came into force on 28th December 2009 requires fees for the granting of licences to be cost-neutral.

Material Considerations

- 6 The provision of fee setting under this section of the Act does not allow the delegation of that responsibility to officers or to any function other than the Licensing Committee.
- 7 It is known that applications for licences for this category of business are highly contentious and result in significant resource pressures due to the usual level of interest and objections.
- 8 The proposed fee is set having had regard to guidance issued by the Home Office with the approval of the Treasury and the Local Government Association. These figures have been used by many local authorities when setting their fees. In setting their fees a local authority must have regard to the requirements of the European Union Services Directive and any licensing case law, of which the recent case in the Court of Appeal of *Hemming v Westminster City Council* is especially relevant.

- 9 The ruling means that for these types of licences authorities may only charge the cost of processing and determining the application in the first instance. Should the licence be ultimately granted there would be an additional charge upon grant to cover other costs of managing, monitoring and enforcing the regime.
- 10 The following aspects have been considered in calculating the proposed fees:
- Consultation with the trade and other relevant parties
 - Advice and guidance to prospective applicants
 - Fee processing
 - Application processing
 - Consideration of application
 - Formal committee hearings where required
 - Production of licence
 - Post licence inspection(s)
- 11 The proposed fee for the licence is £3517 with a breakdown of the estimated costs attached as Appendix 2 to this report. The application cost is £3453 which would be payable upon receipt followed by £64 charge upon grant to cover the potential routine monitoring and enforcement costs.
- 12 The cost estimate is based on a previous application for such a venue (the *Red Velvet* SEL in 2012). See Appendix 2 Cost accounting – Fee Setting for Sexual Entertainment Licensing. The fees in relation to the costs of a hearing is a best estimate as Democratic Services are unable to provide a figure which shows the overall costs as they consider that there are too many variable factors.

Conclusion

- 13 A local authority can set a fee for sex establishments and sexual entertainment venues.
- 14 This fee must be cost neutral and must be set by the Licensing Committee.

Recommendations

- 15 That the General Licensing and Registration Committee approves the proposed Sex Establishment Licence fee that will include all forms of regulated sexual entertainment.

Background papers:

- Local Government (Miscellaneous Provisions) Act 1982

Contact: Joanne Waller Tel: 03000 260924

Appendix 1: Implications

Finance

Cost accounting seeks to ensure that income from sexual entertainment licensing balances the costs associated with the licensing regime and that cost neutrality is maintained

Staffing

None

Risk

Failure to comply with the ruling in Court of Appeal of Hemming v Westminster City Council could lead to challenge and reputational damage

Equality and Diversity

None

Accommodation

None

Crime and Disorder

None

Human Rights

None

Consultation

None

Procurement

None

Disability Issues

None

Legal Implications

None

Appendix 2 Cost Accounting - Fee setting for Sexual Entertainment Licensing

Table 1. Total Personnel Costs (Based on Red Velvet Application 2012)

Officer	£ Per Hour	Time in Hours	£ Total
Licensing Manager (LM)	45	15	675
Senior Licensing Officer (SLO)	32	5	160
Licensing Team Leader (LTL)	32	74 (2 weeks)	2368
Legal Advice (LA)/Committee (C)/Members (M)			£250
Licensing Enforcement officer (Based on an annual inspection)	32	2	£64
		94	3517 (application charge £3453, charge upon grant £64)