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LICENSING AND APPEALS COMMITTEE

Minutes of a Meeting held on Thursday, 21 October 2021 in the Council Chamber at the Town Hall, Matlock at 6.00pm

PRESENT Councillor Tony Morley - In the Chair

Councillors Jacqueline Allison, Graham Elliott, Clare Gamble, Alyson Hill, Stuart Lees, Michelle Morley, Andrew Statham, Colin Swindell Steve Wain, Mark Wakeman

Tim Braund (Director of Regulatory Services), Lee Gardner (Legal Services Manager), Eileen Tierney (Licensing Manager) and Jason Spencer (Electoral and Democratic Services Manager).

APOLOGIES

Apologies for absence was received from Councillors Paul Cruise and Peter O'Brien.

163/21 – MINUTES

It was moved by Councillor Mark Wakeman seconded by Councillor Michelle Morley

RESOLVED That the Minutes of the meeting of the Licensing and Appeals Committee meeting held on 30 June 2021 be approved as a correct record.

Voting

For	10
Against	0
Abstained	1

The Chairman declared the motion CARRIED

164/21 INTERESTS

No Interests were declared.

165/21 – LICENSING & APPEALS SUB-COMMITTEE PROCEDURES

The Committee considered a report seeking approval for written procedures on the Sub-Committee Hearings which aimed to provide a better customer service by giving applicants

and parties involved clear guidance on how a hearing will be conducted as well as assist in the making of more robust decisions.

The following procedures were attached at appendix 1:

- a) New Application for a Licence under the Licensing Act 2003
- b) Application to vary an existing Licence under the Licensing Act 2003
- c) Review of existing Licence under the Licensing Act 2003
- d) Objection to a Temporary Event Notice (TEN)

It was noted that, while this report concentrated on Licensing Act 2003 appeals, other procedures would be produced in the future to cover other functions and provide a definitive list of matters which are determined by the Licensing and Appeals Sub-Committee.

The Committee were generally pleased to see these procedures and welcomed the attempt to provide greater clarity, there were some concerns that they were still complex particularly around the time allocated to speakers.

The Officer recommendation to approve the procedures was moved by Councillor Michele Morley, seconded by Andrew Statham. The motion was put the vote with 4 votes for, 5 against and 1 abstention. The Chair declared the motion LOST.

It was moved by Councillor Colin Swindell, seconded by Councillor Steve Wain

RESOLVED That consideration of the procedures be deferred to a future meeting to allow the Legal Services Manager to look again at the issues related to the timing of speakers.

Voting

For	10
Against	0
Abstain	1

The Chairman declared the motion CARRIED.

166/21 – THE MOBILE HOMES (REQUIREMENT FOR MANAGER OF SITE TO BE A FIT AND PROPER PERSON) (ENGLAND) REGULATIONS 2020

The Committee considered a report setting out the Council's responsibilities under the provisions of The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020 which came into effect on the 1st July 2021.

The Regulations introduced a fitness and propriety regime for operators of residential caravan sites (defined as relevant protected sites), to improve the standards of residential mobile home site management. The Committee were asked to support the action taken by Officers in setting up an interim application procedure for registering managers of residential caravan sites in the Derbyshire Dales; and agreed a recommendation to prepare a Fit and Proper Person Determination Policy and a Fit and Proper Persons Fees Policy to be approved by the Governance and Resources Committee. It was noted that there was currently 1 site in the District.

It was moved by Councillor Colin Swindell, seconded by Councillor Michele Morley

RESOLVED
(Unanimously)

- 1) That the Committee retrospectively approves the application process introduced for establishing the register, and managing it between 01st July and 01st October 2021.
- 2) That a Fit and Proper Person Fees Policy is developed following appropriate consultation, and is referred to a meeting of the Governance and Resources Committee for final approval.

The Chairman declared the motions CARRIED.

167/21 - NATIONAL TAXI AND PRIVATE HIRE VEHICLE STANDARDS LICENSING – PROGRESS REPORT

The Committee considered a report providing an update on progress made on the implementation of the national standards for Taxi and Private Hire Licensing, issued by the Department for Transport (DfT) in 2020. The Standards/Guidance had been issued under section 177(1) of the Policing and Crime Act 2017. Because all Councils were expected to adopt these if their own Taxi Licensing Policy did not already address the specific issues raised, the Council's current Taxi & Private Hire Licensing Policy (reviewed and implemented in May 2018) was compared against the statutory guidance/standards. The areas that had already been addressed by the Council and those still needing some more work or initial consideration were shown in a table in Appendix 1 of the report.

It was confirmed that taxi and private hire trade in the Derbyshire Dales was being consulted on those standards where it was felt further improvements could be made to the Council's Policy. It was however suggested that the consultation exercise should be extended to include the public and other stakeholders, and that any comments received by the closing date of 30th November 2021, be analysed by officers and then reported to the meeting of the Committee to be held on 13 January 2022. The report would include reasons why the comments should or could not be included in a final draft Policy for the Committee to refer to the full Council with the aim of implementing any changes on 1st May 2022

The Committee specifically considered the issue of CCTV in taxis and other licensed vehicles. The national standards suggested that licensing authorities should consult on whether there were local circumstances which suggested that the installation of CCTV in vehicles could have either a positive or an adverse effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, taking into account potential privacy issues. It was noted that the Police and Crime Commissioner for Derbyshire had written to all licensing authorities urging them to consider this as a mandatory requirement. The Legal Services manager advised that he believed that, as a policy requiring the installation CCTV into taxi's was considered to be high Risk, his legal advice was not to approve recommendation 3 without further information as to how this would interact with Information Commissioners Guidance and the Human Rights Act 1998 Article 8 Right to private and family life.

It was noted that an application for annual membership of the National Register of Taxi and Private Hire Licence Refusals and Revocations was being prepared with a subscription fee of £1,600 p.a included in the budget for the first year and, in line with Local Government Association guidance, the cost could be recovered from hackney carriage/private hire driver licence fees in future years.

Following discussion the Officer recommendations set out in the report were moved by Councillor Colin Swindell and seconded by Councillor Clare Gamble subject to recommendation 3 being amended to clarify that the consultation on CCTV would be with the police and insurance companies only:

RESOLVED
(Unanimously)

- 1) That the consultation exercise with the taxi and private hire trade in the Derbyshire Dales, on the proposed changes to the Council's taxi and private hire licensing policy, be extended to include other stakeholders and the general public.
- 2) That the results of the consultation exercise be reported back to the January 2022 meeting of this Committee with a final draft Taxi and Private Hire Licensing Policy for final consideration.
- 3) That, in accordance with the recommendation in the taxi and private hire licensing national standards/guidance, a separate consultation exercise is carried out with only the Police and Insurance Companies, to identify if there were local circumstances which indicate that the installation of CCTV in licensed vehicles would have either a positive or an adverse net effect on the safety of taxi and private hire vehicle users, including children or vulnerable adults, taking into account potential privacy issues

The Chairman declared the motion CARRIED.

168/21 - UPDATE OF THE COUNCIL'S CONSTITUTION – DELEGATIONS - PART 3: RESPONSIBILITIES FOR FUNCTIONS

The Committee considered a report setting out proposals to update and amend the current arrangements in place within the Council's Scheme of Delegation, set out in Part 3 of the Constitution (Responsibilities for Functions).

The proposed updates were as follows:

a) Policing and Crime Act 2017 - Suspension of Personal Licences

Prior to April 2017, only the magistrates' court had the power to revoke or suspend a personal licence where the licence holder had been convicted of a relevant offence. However, Section 138 of the Policing and Crime Act 2017 amended the Licensing Act 2003, by introducing Section 132A giving licensing authorities the power to revoke or suspend personal licences with effect from 6th April 2017. Therefore if a licensing authority had granted the personal licence and became aware that the licence holder had been convicted of a relevant offence or foreign offence or has been required to pay an immigration penalty on or after 6th April 2017, the authority had the discretionary power to revoke the licence or suspend it for a period of up to six months. The process that must be followed by the licensing authority to suspend or revoke a personal licence was set out in Section 132A of the Licensing Act 2003. Section 138 of the Policing and Crime Act 2017 confirmed that the decision to revoke or suspend a personal licence (following a relevant conviction or immigration penalty) may not be delegated to an officer. Once an Officer determines revocation or suspension of personal licence may be appropriate it is required to service notice. The Personal licence holder has 28 days to respond, the information is then presented to a Licensing and Appeals Hearing. Therefore the Committee was asked

to give Officers authority to serve the initial notice. It was noted that a full procedure would be drafted and brought to committee for approval at a later date.

b) The Mobile Homes (Requirement for Manager of Site to be a Fit and Proper Person) (England) Regulations 2020

Section 8 of the Mobile Homes Act 2013 ('the Act') introduced a power for the Secretary of State to create a requirement for residential caravan sites (referred to as relevant protected sites in the Act) in England to be managed by a fit and proper person. In 2017 the Government reviewed the Mobile Homes Act 2013 and the review concluded that more needed to be done to protect the interests of those living on residential caravan sites. One of the outcomes of the review was to introduce the previously not enacted fit and proper test, subject to a technical consultation. Between 25 July 2019 and 17 September 2019 the technical consultation on the fit and proper person test gathered information from stakeholders to ensure the test would cover the required elements and target and remove the worst offenders in terms of poor site management without unduly burdening responsible owners. Following the end of the consultation the Regulations were developed and came into force on the 23 September 2020. Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 required that Those applying to be on the register of fit and proper persons must show that they are able to secure the proper management of the site; demonstrating amongst others things a history of compliance with the site licence, a good history of maintenance of the site, that they have a sufficient level of competence to manage the site and that they have not been convicted of a number of offences the Regulations deem relevant. Following a successful application a person may be added to the fit and proper register for a period the Council deems appropriate, but for no longer than five years. The Council may also decide to include a person on the register subject to conditions if it would only be satisfied that the relevant person would meet the fit and proper requirement if the condition(s) were complied with. It is determined that anyone who fails to meet the criteria or the authority wishes to remove from the register will be referred to committee for determination. The Mobile Homes (Requirement for Manager of Site to be Fit and Proper Person) (England) Regulations 2020 allows the Licensing Authority to prosecute for breaches of these regulations and also apply to remove a site licence to the first tier tribunal.

It was therefore recommended that Officers be given the authority to determine applications in line with the relevant legislation, refer matters to committee where appropriate and take all necessary legal action to uphold the regulations and determine the period to remain on the register being the maximum of 5 years.

c) Licensing Act 2003 - Enforcement Powers of Entry

The Licensing Act 2003 contained various provisions that granted a right of entry to authorised persons to gain access to premise to carry out the functions of the Licensing Act. The relevant sections of the Act were 59, 96, 97, 108,179 and 180. Officers feel the constitution is not clear that the relevant authority has been given and therefore ask member to confirm that the delegations apply to the relevant officers listed in the report.

It was moved by Councillor Steve Wain, seconded by Councillor Clare Gamble and

RESOLVED
(Unanimously)

That the following delegations are approved for inclusion in Part 3 of the Council's Constitution:

- 1 To delegate to the Licensing Manager/ Director of Regulatory Services to serve notice on Personal Licence holders that the Licensing Authority is considering suspension or revocation of their licence.

- 2 To delegate authority to the Director of Regulatory Services/Licensing Manager to determine whether an applicant is a Fit and Proper Person and refer the application to the Sub-Committee where it is proposed that the applicant is included on the register under the Mobile Homes Act 2013 or the applicant is to be removed from the register.
- 3 To Delegate to the Legal Services Manager, in consultation with the Director of Regulatory Services or the Licensing Manager the authority to commence legal proceedings under the Mobile Homes Act 2013 and subordinate legislation.
- 4 To agree that the period of time to remain on the register being 5 years before the need to re-register.
- 5 To delegate to the Director of Regulatory Services, Licensing Manager, Environmental Health Manager, Principal Environmental Health Officer, Environmental Health Officers, Environmental Health Technical Officers rights of entry under sections 59, 96, 97, 108,179 and 180 of the Licensing Act 2003

The Chairman declared the motion CARRIED.

MEETING CLOSED 7.25PM

CHAIRMAN