

LICENSING COMMITTEE AGENDA



Wednesday 10th December 2008

at 2.00 pm

in Committee Room B

MEMBERS: LICENSING COMMITTEE:

Councillors Aiken, Atkinson, Brash, R W Cook, Fleet, Fleming, Griffin, Hall, Jackson, G Lilley, London, McKenna, Morris, Rogan and Tumilty

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

3.1 To confirm the minutes of the meeting held on 24th September 2008

4. ITEMS REQUIRING DECISION

4.1 Hackney Carriage and Private Hire Policy – *Head of Procurement, Property and Public Protection*

4.2 Review of Street Trading Controls – *Head of Procurement, Property and Public Protection*

5. ITEMS FOR INFORMATION

6. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

LICENSING COMMITTEE

MINUTES AND DECISION RECORD

24 September 2008

The meeting commenced at 10.00 a.m. in the Civic Centre, Hartlepool

Present:

Councillor George Morris (In the Chair)

Councillors: Martyn Aiken, Reuben Atkinson, Jonathan Brash, Rob Cook, Mary Fleet, Sheila Griffin, Geoff Lilley, Frances London, Chris McKenna and Trevor Rogan

In accordance with Council Procedure Rule 4.2 (ii), Councillor Carl Richardson attended as substitute for Councillor Peter Jackson.

Officers: Alison Mawson, Head of Community Safety and Prevention
Ian Harrison, Principal Licensing Officer
Richard Smith, Locum Solicitor
Jo Wilson, Democratic Services Officer

13. Apologies for Absence

Apologies for absence were submitted from Councillors Tim Fleming and Peter Jackson.

14. Declarations of Interest by Members

None.

15. Confirmation of the Minutes of the Meeting held on 7th August 2008

Agreed

16. Town-wide Designated Public Places Order *(Head of Community Safety and Prevention and Chief Solicitor)*

Purpose of report

To consider the legal implications of introducing a town-wide Designated Public Places Order (DPPO)

Issue(s) for consideration by the Committee

Members had previously asked about the possibility of a town-wide Designation Order being introduced. Police representatives had advised they were in favour of a town-wide enforcement but understood that legally this could be a problem as only some areas were affected by anti-social drinking in public places.

The Criminal Justice and Police Act 2001 allows local authorities to adopt powers contained in the Local Authorities (Alcohol Consumption in Designated Public Places) Regulations 2007 to designate areas which have known anti-social drinking and nuisance associated with them. In designated areas the Police are provided with powers to enforce restrictions on public drinking. Making an order is a non-Executive function and therefore it was agreed by Council in December 2006 that any decisions in this regard would be delegated to the Licensing Committee. Details were given of the process to be followed in designating areas.

Two phases had previously been considered by members of the Licensing Committee and designation approved, specifically areas covered by the previous alcohol byelaws and areas such as out of town shopping parades, play areas, cemeteries, parks and some residential streets. Lists specifying the areas covered were attached to the report.

With regard to previous requests from members that a town-wide Designation Order be considered it was noted by officers that a few Local Authority areas had designated their whole Borough. However if there was not evidence showing that all public areas had anti-social drinking this could leave the Order unenforceable and risk a judicial review, thereby exposing the Authority to an Order for Costs which could be substantial.

Nevertheless members were still minded to pursue the possibility of a town-wide designation order. They felt this was necessary as the existing list of areas would only lead to displacement to those areas which were not currently on the list. Eventually those areas would also need to be added until virtually the whole of Hartlepool was designated. To bring in a town-wide order would avoid a lot of unnecessary additions. The Locum Solicitor advised that evidence of alcohol-fuelled anti-social behaviour was the key to designating the whole of the Borough an alcohol-free zone. There had so far been no test cases carried out in areas with a town-wide designation so there was no knowing what the consequences might be and how town-wide evidence could be challenged in the future. He also clarified that designation was not a ban on the drinking of alcohol in public, just a way to give the police more power to remove alcohol if anti-social behaviour was taking place as a direct result of its consumption. Any orders would be dependent on the ability of the police to enforce them. However Members felt that since the police had previously given their support to a town-wide designation order this would not be a problem. The public also wanted a town-wide designation order, all that was needed was the political will.

In response to concerns regarding the legality of a town-wide designation order it was suggested that officers liaise with the police and anti-social behaviour unit to ascertain if there was evidence of alcohol-fuelled anti-social behaviour in all areas of the town. As there was no time limit on evidence this would mean that any recollections of such behaviour would constitute evidence and could be used to refute any legal challenges. This would lead to a de-facto town-wide designation order without it actually being billed as such.

Further queries were raised regarding the designating of areas not owned by the Council. The Head of Community Safety and Prevention advised that only land where the public had right of access could be designated. The police had other powers to tackle problems on privately-owned land. Signage costs would be covered within existing budgets and future street parties would not be affected as this was not a ban on outside drinking, merely a way of giving additional powers to the police to stop alcohol-fuelled anti-social behaviour.

Decision

- I. That the areas detailed in the current Designated Public Places Order be endorsed.
- II. That the additional areas referred to within the report be included in a further designation order as soon as is practical
- III. That evidence be sought from the police and Anti-Social Behaviour Unit of alcohol-fuelled anti-social behaviour in all areas of Hartlepool to assist in achieving a town wide designation.

17. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS URGENT

The Chair advised the Committee members that all future meetings of the Licensing Committee would now commence at 2.00pm.

The meeting concluded at 10:55 am

CHAIR

Report of: Head of Procurement, Property and Public Protection

Subject: HACKNEY CARRIAGE & PRIVATE HIRE POLICY

1. PURPOSE OF REPORT

- 1.1 To consider an amendment to the Hackney Carriage and Private Hire Licensing Policy in the light of recent legal developments.
- 1.2 To consider further additions and amendments to the Hackney Carriage and Private Hire Licensing Policy in order to address other outstanding issues.

2. BACKGROUND

2.1 Judicial Review – Berwick Borough Council

- 2.2 Members may be aware that Berwick Upon Tweed Borough Council have recently had their Taxi Policy Judicially reviewed by Newcastle City Council.
- 2.3 The background to this was that Berwick Council had, for the last 2 years, been licensing Hackney Carriages that were not operating or working in the Berwick area. During this time the number of Hackney Carriages licensed by Berwick rose from 46 to 672 – the equivalent of one for every 40 residents.
- 2.4 The reason for this dramatic rise lies in the legal definition of Hackney Carriages and Private Hire Vehicles. Private Hire Vehicles are effectively restricted to work in the area in which they are licensed. Hackney Carriages can tout for business in the area in which they are licensed but may also carry out pre-booked work (essentially act like a private hire vehicle) anywhere in the country.
- 2.5 This allowance is not expressly stated in law, but is rather permitted because it is not expressly prohibited. This is almost certainly due to the Act itself which dates back to 1847 when it would have been inconceivable for horse drawn Hackney Carriages licensed by one area to operate across the entire country.
- 2.6 As Private Hire Operators recognised the opportunity to use Hackney Carriages to carry out their pre-booked work, they looked for licensing authorities with the lowest standards and licence fees.
- 2.7 Berwick was identified by a number of Operators who then brought their Hackney Carriages up to Berwick to be licensed.
- 2.8 A number of these Berwick licensed vehicles subsequently worked in the Newcastle area (amongst others) and Newcastle objected to this as they

believed that the Berwick licensed vehicles, and drivers, were of a lower standard and, as such, should not be operating in the city.

2.9 Discussions between the two authorities failed to reach an agreement and finally Newcastle City Council applied for a Judicial Review of Berwick's taxi policy – arguing that Berwick should not issue Hackney Carriage licences for vehicles that would not be operating in the Berwick area.

2.10 On 4th November 2008 the High Court ruled that the taxi licensing laws were essentially 'local in character' and, as such, vehicles should generally work in the area in which they were licensed. The judgement did not create any new criminal offence but rather clarified the existing law.

2.11 As a result of this judgement, it is necessary to amend Hartlepool's Hackney Carriage and Private Hire Licensing Policy to ensure that Hackney Carriages licensed by Hartlepool carry out the majority of their work in the Hartlepool area.

2.12 Public Liability Insurance

2.13 The current Hackney Carriage and Private Hire Licensing Policy states that every licensed vehicle must have public liability insurance.

2.14 As the current policy does not specifically state the minimum amount of insurance to be held, it is proposed that a minimum value of £5,000,000 be specified.

2.15 Knowledge Tests

2.16 All applicants for private hire and hackney carriage drivers licences must pass a 'knowledge test' before they may be granted a licence.

2.17 Knowledge tests consist of three parts: - legislation, disability awareness and locations (i.e. knowledge of streets, tourist sites etc).

2.18 The current pass mark is an aggregate of 80% across the three papers but hackney carriage drivers must achieve a minimum of 65% on locations.

2.19 If an applicant fails the test they may re-sit but there is a re-sit charge of £20.

2.20 Some applicants, particularly those who reside outside Hartlepool, have failed their knowledge test on a number of occasions but continue to re-sit as there is currently no limit on how many times an applicant may try.

2.21 It is proposed that a condition be added to the Licensing Policy stating that applicants must pass the knowledge test within five attempts. Failure to do so would terminate their application and the applicant would be required to wait for a minimum of six months before being able to re-apply.

2.22 Drivers Licences

- 2.23 Hackney Carriage and Private Hire drivers are issued with a badge that they must carry with them at all times and a blue licence that is sent to and retained by their employer.
- 2.24 It has become apparent that these blue licences are not being transferred between employers when a driver moves to a new firm.
- 2.25 It is proposed that a new condition be added to the Licensing Policy requiring every employer to hold the blue licence for every driver they employ. This will assist with licensing enforcement work as it will remove any confusion about who was actually employing a driver at any particular time.

3. ISSUES

3.1 Judicial Review – Berwick Borough Council

- 3.2 An amendment to the Licensing Policy is required to ensure that Hackney Carriages licensed by Hartlepool Borough Council carry out the majority of their pre-booked work in Hartlepool.
- 3.3 The proposed new conditions to be included in the Policy are attached as Appendix I. These will ensure that Hackney Carriages licensed by Hartlepool Borough Council carry out at least 90% of their pre-booked work within the Hartlepool boundary.

3.4 Knowledge Tests

- 3.5 The pass mark for knowledge tests is 80% and whilst this may appear high, it has been set at this level for many years. Questions are reviewed periodically to ensure they remain fair and up to date.
- 3.6 The current failure rate is around 40% for the first test with almost all applicants subsequently passing on either their first or second re-sit. Almost all failures are due to a lack of knowledge of locations rather than a lack of understanding of legislation or disability awareness.
- 3.7 At the time of application, all applicants are provided with a pack that explains the legislation relating to taxi laws and disability awareness. Applicants are also advised to ensure they have a thorough knowledge of local roads before they apply to sit the knowledge test.
- 3.8 The Licensing Team currently have one applicant, from the Middlesbrough area, who has failed his knowledge test six times and, despite being strongly encouraged to wait, has already applied to do his seventh. He scored 33% in his most recent location test.

4. RECOMMENDATIONS

- 4.1 That Members approve the new and amended conditions as contained in Appendix I.

Proposed New Conditions

1. When carrying out pre-booked work, Hackney Carriages must predominantly be used for journeys where either the pick up or drop off point is within the boundary of Hartlepool.

Predominantly means 90% of all pre-booked work over any continuous 7 day period.

2. All Hackney Carriage owners shall ensure that records are maintained for all pre-booked work carried both within and outside the boundary of Hartlepool. Such records shall be made as soon as a booking is received and be made available to an authorised officer immediately upon request. Records shall be retained for one year after the booking was made.

The details to be recorded are as follows: -

Date and Time of Booking

Name of Client

Details of Booking – Pick up and Drop off point

Drivers Name

3. Paragraph 2.5 (c) (iii) shall be amended to ‘Public Liability Insurance Certificate to a minimum value of £5,000,000’.
4. Applicants for Private Hire or Hackney Carriage drivers licences must pass the knowledge test within five attempts. Should an applicant fail the knowledge test on five occasions, the licence application shall be ended and the applicant will be required to wait for a period of six months from date of the last knowledge test before being allowed to re-apply.

The new application must be a full application requiring both a new CRB disclosure and new medical certificate.

5. Private Hire Operators and Hackney Carriage employers shall hold the Hackney Carriage or Private Hire Drivers licence for every driver either employed or operating through them. Such licences must be made immediately available for inspection by an authorised officer at any reasonable time.

Report of: Head of Procurement, Property and Public Protection

Subject: REVIEW OF STREET TRADING CONTROLS

1. PURPOSE OF REPORT

1.1 To review the current arrangements for the control of street trading in Hartlepool.

2. BACKGROUND

2.1 Fees

2.2 On 2nd March 2005 it was resolved that parts of the Local Government (Miscellaneous Provisions) Act 1982 be adopted to have the effect of requiring permissions to be obtained for street trading in Hartlepool.

2.3 Anyone wishing to trade from any street in Hartlepool, except a prohibited street, is required to obtain from the Council a Street Trading Licence or a Street Trading Consent.

2.4 The issue of street trading controls first arose in 2005 following a number of complaints about mobile traders at various locations across Hartlepool causing significant problems associated with litter and obstructing the highway. It was for this reason that Members chose not to limit street trading controls to traditional popular trading locations such as Seaton Carew and the Headland but instead to extend it across the town so as to ensure any problems, regardless of their location, could be addressed.

2.5 At your meeting on 12th March 2008 Members requested that a review of current street trading controls be carried out following representations from a Member who expressed concern regarding the level of fees charged to mobile traders.

2.6 A review of street trading controls was presented to Committee on 2nd July 2008 and proposals were suggested to Members that would allow a reduction of £200 per annum in the licence fee for ice cream vans without increasing the costs for other mobile traders. This would be achieved by abolishing refunds for those traders who surrendered their consents early.

2.7 Members rejected those proposals, feeling that a larger reduction in fees for ice cream vans was justified and that refunds for those who surrender their consents should be retained. Officers were instructed to make further efforts to produce a fee structure that would significantly lower fees for ice cream vans.

- 2.8 Current street trading consent/licence fees are attached as Appendix I.
- 2.9 Street trading permissions fall into two distinct categories – fixed site and mobile. Fixed site traders operate from one approved location, such as a lay-by or car park. Mobile traders are allowed to trade from any location but may remain there for no more than 15 minutes before they must move on.
- 2.10 At the time of writing this report there were 8 annual consents in force for *fixed* site trading. This consisted of 5 hot food vendors and 3 ice cream sellers. *Mobile* traders consisted of 2 ice cream vans and 1 hot food trader.

2.10 Conditions for Large Events

- 2.11 As part of the ongoing planning for The Tall Ships event in 2010, consideration has been given to the terms and conditions currently attached to street trading consents and licences.
- 2.12 It is anticipated that there will be a large number of mobile traders visiting Hartlepool during The Tall Ships event, and in some locations, a number of traders will be situated in close proximity.
- 2.13 Discussions with the Council's Health and Safety team and Cleveland Fire Service has highlighted a number of additional conditions that should be added to all street trading consents and licences to ensure their safe operation.
- 2.14 Appendix II highlights the proposed new conditions.

3. ISSUES

3.1 Fees

- 3.2 It is recognised that Hartlepool operates a system of street trading controls that is quite unique in that almost all of Hartlepool is a controlled area and, as such, anyone wanting to trade requires permission to do so. This contrasts with most other local authorities whereby street trading controls apply to only specific designated locations.
- 3.3 In some locations, mobile traders represent direct competition to established shops. The impact that any transient trader can have on shops, particularly at very busy times should not be underestimated. Many shops are dependent upon occasional busy days to generate enough revenue to continue in business throughout the year.
- 3.4 If Members believe that the fees currently charged to mobile traders, such as ice cream vans, are too high, any reduction in fees must be either offset

against an increase in other fees, such as fixed sites, or financed in another way.

- 3.5 In order to reduce the financial burden for ice cream sellers, without producing a shortfall in revenue, it will be necessary to increase the cost of consents for other traders. As there are currently five ice cream sellers and six hot food vendors, it can be seen that any transfer of costs would be significant. For example, every £100 saved by an ice cream seller would increase the cost for a hot food vendor by £83.
- 3.6 A 'significant' saving for ice cream sellers (i.e. £500) would increase the annual cost of a consent for a hot food vendor by £415. This would increase the cost of an annual consent to around £1500 (up from £1060).
- 3.7 An alternative to the above would be to reduce the fees for *mobile* ice cream sellers only.
- 3.8 As there are currently only 2 *mobile* ice cream sellers, a reduction in their fees would have a lesser impact on other street traders (i.e. fixed site traders). For example, every £100 saved by a *mobile* ice cream seller would increase the cost for fixed site traders (including fixed site ice cream sellers) by only £11.
- 3.9 An annual saving of £500 for a mobile ice cream seller would increase the annual cost of a consent for fixed site traders to around £1100 (up from £1060).
- 3.10 If Members were minded to recommend this approach, consideration must be given as to whether it would apply to all mobile traders or only ice cream sellers. Currently there is one mobile trader who sells hot food. Allowing a reduction in fees for mobile hot food traders would obviously result in a greater rise in costs for fixed site traders.
- 3.11 Should Members be minded to recommend a change to the current fees structure, the issue would be taken to the Adult and Public Health Services portfolio holder for consideration at the next appropriate meeting.

3.12 Conditions for Large Events

- 3.13 The new conditions proposed in Appendix II are not expected to increase the operating costs for traders but will significantly improve public safety during large scale events where a fire, or other emergency, could easily impact on other traders located close by.

4. RECOMMENDATIONS

- 4.1 That Members express their support for a reduction in street trading consent and licence fees for 'mobile' ice cream sellers and determine what fee structure they consider appropriate.
- 4.2 That Members approve the new conditions attached as Appendix II.

STREET TRADING FEES 2008/9

STREET TRADING

All fees include a £50.00 non-refundable application charge, which will be retained by Hartlepool Borough Council should an application be refused or withdrawn.

<u>Street Trading Consents</u>	0500 hrs – 2100 hrs (1800 hrs)		2100 hrs – 0500 hrs	
Annual	£1060	(£1030)	£2120	(£2060)
½ Yearly	£636	(£618)	£1272	(£1236)
Monthly	£160	(£155)	£320	(£310)
Weekly	£108	(£105)	£216	(£210)
Daily	£54	(£52)	£108	(£103)

Street Trading Licence

Weekly	£108	
Daily	£54	(£52)

Where attending Wednesday, Thursday open market, Farmers Market or Maritime Festival, the above fee will not be charged as it is covered in the existing charges.

The figures in brackets represent last years fees.

Appendix II

Proposed New Licence/Consent Conditions

1. There must be a minimum separation distance of at least 2 metres between each trading premises. It shall be the responsibility of every trader to ensure such a separation distance is achieved.
2. Licence/consent holders may have a maximum of two liquefied petroleum gas (LPG) cylinders at the premises at any one time. The maximum size of any one cylinder shall be 47Kg.
3. There shall be no filling of LPG cylinders at the trading site.