

Licensing Committee – 22 February 2017

Present: Councillors Mrs Blatchford, Brown, Gage, Mrs Gunner, Mrs Hill, Hunt, James, R Lees, Morrell, Nicholls and Sully.

Officers: John Rendell (Licensing Manager), Mark Banczyk-Gee (Licensing Officer), Alison Evens (Licensing Officer), Fern Avis (Licensing Officer) and Clare Rendell (Democratic Services Officer)

Other: Councillor Berry

(The meeting commenced at 6.15 pm)

1. Appointment of Vice-Chairman

Resolved that Councillor James be appointed Vice-Chairman of the Licensing Committee for the remainder of the Municipal Year.

In the absence of the Chairman, Councillor James took the Chair.

2. Apologies/Substitution

Apologies: Councillors Davies, Mrs Lees and Ross.

Substitution: Councillor R Lees for Mrs S Lees.

3. Minutes

The minutes of the meeting of the Licensing Committee held on 16 November 2016 were taken as read and were signed.

4. Licensing Service Update Report

Considered report previously circulated, which provided an update on the activities of the Council's Licensing Service, changes to legislation, current consultations and other general Licensing matters.

A summary of the activity and performance of the Licensing Service since the last meeting of the Committee was as follows:-

- The performance of the Licensing Service was measured against the number of applications that were completed within 14 days of them being determined. The target was 95%.
- This target had been reached between 1 October and 31 December 2016.
- This was the second consecutive quarter that the service had achieved its target.
- The performance of the service over the last quarter was especially pleasing given the reduction in staffing levels during the period. Since the last Committee meeting, two members of staff had been appointed to the vacant posts.

Members were provided with a comparison of the number of applications received between October and December 2016 for the preceding two years and a summary of the numbers of licenses in force and notices given as at 6 February 2017.

Generally, application numbers during this period remained fairly similar in number to that period in the preceding two years. There had been a gentle increase in the number of Licensing Act 2003 applications and notices received over the three year period but, having looked more closely at the total number for each application and notice type, there were no clear trends that could be identified.

The numbers of service requests received by the service between October and December 2016, compared with the previous two years were also reported. There were more service requests recorded in 2015 and 2016 due to improved record keeping.

Members were familiar with the problems the service had experienced with Hackney Carriage and private hire vehicle drivers operating outside of the area, in particular the City of Bristol.

There were currently 16 individuals registered to Bristol addresses that still held diver licences, which was four less since the last report to the Licensing Committee. There were six continuing service requests/investigations into complaints, which related to four of the aforementioned individuals.

Although the 'out of area driver' policy had played a massive part in addressing the problem, there were plans to expand the 'knowledge and suitability' interview, to include a test on their geographical knowledge.

The Department for Environment, Food and Rural Affairs (DEFRA) had announced plans to tighten up dog breeding licensing legislation.

The new rules would mean that smaller establishments and commercial breeders must meet strict welfare criteria to get a licence. The rules would also be updated and made fit for the modern age with anyone trading commercially in pets online needing to be properly licensed too.

It was anticipated that the above changes would coincide with the modernisation of the other animal licensing regimes, concerning riding establishments, pet shops, dangerous wild animals, zoos and animal boarders.

The Policing and Crime Bill had received Royal Assent on 31 January 2017. Within the Act were a number of proposed changes to licensing legislation, specifically the Licensing Act 2003, which regulated alcohol, entertainment and late night refreshment.

There were particular changes which would affect personal alcohol licences. The 2017 Act would allow licensing authorities to suspend or revoke a personal licence where they became aware that the licence holder had been convicted of a relevant offence or was required to pay an immigration penalty.

The list of relevant offences, which already included offences involving alcohol, drugs, violence and psychoactive substances, had been expanded to include the following:-

- Using someone to mind a weapon;
- The manufacture, import and sale of realistic imitation firearms;
- Offences listed under Section 41 of the Counter Terrorism Act 2014, which included encouragement of terrorism and the preparation and training for terrorism;
- An offence listed in Part 1 of Schedule 15 to the Criminal Justice Act 2003 (specified violent offences), which included kidnapping, false imprisonment and threats to kill.

During the discussion of this item, the following points were raised:-

- Concern was raised about taxi drivers who had a Bristol address and were registered with the Licensing Department. How would this issue be tackled in the future?
Taxi drivers who did not live in the District would need to satisfy the new 'out of area' criteria on the taxi test. This would be administered when they applied to renew their licence.
- Would compliance tests be carried out now that Licensing Department were back to full capacity?
Licensing had maintained its checks on taxi drivers but had not yet discussed within the team the next stage for checks on premises and other licence holders.
- Concern was raised about public drinking and rough sleepers in the town and questioned how many fines had been issued under the new Public Space Protection Order since May 2015?
Unfortunately these figures were not available due to the fines being administered by the Police. The Environmental Health and Licensing Departments were in the process of being authorised to issue fixed penalty notices.
- How was the Licensing Department notified of convictions or relevant offences held by a licence holder?
The Department relied upon the licence holders and the Magistrates Court to notify them.
- Were taxi drivers obliged to notify the Department when they had been awarded any points on their licence?
Taxi drivers were advised that they should notify the Authority of any convictions, but they were not required to disclose information on points applied to their licence. However, when drivers applied to renew their taxi licence, the number of points on their licence were checked. If the points were above a certain level, the taxi driver would be invited to attend an interview with the Licensing Manager or a Sub-Committee hearing before the decision to renew the licence was taken.

Resolved that the report be noted.

5. Review and update of Policy for Street Trading – Itinerant Traders

Considered report previously circulated, concerning a proposal to amend the Street Trading Policy to address the operation of itinerant traders. The amendment would remove the requirement for such traders to hold a Street Trading Consent whilst they operated from street to street.

Taunton Deane Borough Council had adopted Schedule 4 for the Local Government (Miscellaneous Provisions) Act 1982 in order to control street trading. The Council had adopted the Act in such a way that all 'streets' within the District were designated as 'consent streets', meaning that street trading could only lawfully take place where the trader held consent from the Council.

An itinerant trader was defined as a trader who travelled from place to place (itinerant) to sell (trade). Although Taunton Deane did not currently classify or verify what an itinerant street trader was, the London Local Authorities Act 1990, had defined 'itinerant ice cream trading' – details of which were submitted for the information of the Committee.

Currently mobile ice cream vendors in Taunton Deane were treated as street traders and last year three consents had been granted. However, the Licensing Department had received a complaint from one of the licensed vendors, who had identified six other vans operating during the summer of 2016 without consent.

Due to recent changes in the department, Licensing had acknowledged that they had not been able to carry out the enforcement of licensing legislation across all the areas they covered. In particular, enforcement of itinerant street traders was difficult due to their rounds being changeable.

Research undertaken with other licensing authorities had shown that if a mobile ice cream vendor required permission to trade at a venue in a fixed spot they would require permission unless it was an event that required payment to enter. However, if they were mobile, there was no fixed approach.

Both North Somerset and Sedgemoor Councils currently dealt with ice cream vans as itinerant vendors and therefore did not issue them with a licence or consent unless they were static.

During the discussion of this item, the following points were raised:-

- Concern was raised about what limits there were on how many itinerant traders could operate in an area. Traders could park next to one another, which could cause congestion or conflict. How would this be controlled?
There was no control at present. The policy stated that they were not allowed to trade in the town centre. It was confirmed that there was no limit to how many street trading consents could be issued by the Council.
- Concern was raised that licenced traders would be disenfranchised by those who had not registered and who had travelled in from outside the District. It was also disputed that if Licensing were to register all itinerant traders, this would waste officer time. It was suggested that the market would regulate itself, so there was unlikely to be any 'ice cream wars'.
- A request was made for the Licensing Manager to present a full review on the Street Trading Policy at the next meeting. The last time the policy was reviewed was back in 2008.

Resolved that an amendment to the Street Trading Policy, whereby itinerant traders could go street to street and operate without a consent, be approved.

6. Proposal to introduce Proper Business Accounting for Hackney Carriage/Private Hire Drivers and Operators

Considered report previously circulated, concerning a proposed change to the policy and process which was used to determine the fitness and propriety of those that applied to renew their Hackney Carriage/private hire drivers' licence. This was to try and prevent tax evasion.

All Hackney Carriage and private hire drivers were self-employed and generally fell into one of three categories:-

- Those that owned their own vehicle and operated completely independently;
- Those that hired a vehicle from a larger operator; or
- Those that owned a fleet of vehicles, one of which they might drive but then hired the remaining vehicles to others.

Everyone who was self-employed in the UK was required, by law, to be registered with HM Revenues and Customs (HMRC) to whom they had to submit an annual self-assessment in order to have their income tax calculated.

The issue of tax evasion had been raised a number of times at the 'Taxi and Private Hire Forum', the last time being at the meeting held on 16 September 2015.

At the time, the view was taken that although the 'fit and proper' test applied to drivers could be expanded to include evidence of proper business accounting, a change could unnecessarily increase the application fee levied to the trade, particularly as there were already channels that allowed members of the public to report tax evasion direct to HMRC.

As the discussions developed, it was suggested that the Licensing Service could dictate that when drivers applied to renew their licence, they could provide a Unique Tax Reference (UTR) number, which was issued by HMRC, to show that they were properly registered to pay tax.

The Forum met again on 21 October 2015 and discussed the issue further. It was recognised that it would only be reasonable to expect existing drivers who applied to renew their licence to provide their UTR number, since many individuals who had applied for the grant of a licence had yet to find work, so would not necessarily be registered.

It had also been explained that the only practical and cost effective way of handling the UTR data would be to record the UTR numbers on the service database and share information on all drivers with the HMRC on a periodic basis.

Under the proposal, it was suggested that if the Licensing Service was to receive information from HMRC that a driver was not registered or had falsified their information, that drivers licence could be revoked. This proposed arrangement would take up very little extra time and would therefore have a negligible effect on application costs. An overwhelming majority of trade representatives voted in favour of this proposal to be recommended as a change in policy to the Licensing Committee.

In March 2016, the Licensing Manager met with the HMRC's Transformation and Implementation Lead Officer for the 'hidden economy'. At this meeting the HMRC Officer explained that compliance within the taxi sector was a real concern. The HMRC Officer agreed that the policy changes should be implemented and this would help them to act against those who did not operate legally.

During the discussion of this item, the following points were raised:-

- The majority of the Committee were in support of the recommendations.

- A concern was raised that the policy could victimise taxi drivers and be ultra-vires.
The report detailed the power the Council had when it set the criteria to be fulfilled for the fitness and propriety element of the licence application and it seemed reasonable to request an applicant to demonstrate proper business accounting.
- The Committee requested that the Council's solicitors checked the policy before it was implemented.
- It was suggested that to avoid officer's time being wasted, taxi drivers should be advised that they would need to bring in all the relevant information when they submitted their application. If they did not, they would need to obtain any missing details and resubmit.

Resolved that:-

- 1) The adoption of a new policy whereby the Council would require those who applied to renew their Hackney Carriage/private hire vehicle drivers licence to provide a Unique Tax Reference number issued by HM Revenues and Customs and that this data would be shared with the HM Revenues and Customs periodically (normally annually) and upon their request, be approved;
- 2) The adoption of a new policy whereby the Council would refuse to renew a Hackney Carriage/private hire vehicle driver's licence where the applicant/licence holder failed to provide a Unique Tax Reference number be approved; and
- 3) The adoption of a new policy whereby the Council would revoke a Hackney Carriage/private hire vehicle driver's licence where it had learnt that the holder did not have a valid Unique Tax Reference number be also approved.

7. Minutes of the Licensing Sub-Committees

Considered minutes previously circulated. Members requested they received updates on the Sub-Committees and be informed if the decision was appealed and the outcome of the appeal.

Resolved that the minutes be noted for information.

8. Forward Plan

Members discussed items that they would like to be brought before the Committee at the next meeting. These were identified as:-

- A review of the Street Trading Policy; and
- An overview of the Council's position on vaping in public areas.

Resolved that these items would be added to the Licensing Committee's Forward Plan.

(The meeting ended at 7.25 pm)