



**Notice of a public meeting of
Gambling, Licensing & Regulatory Committee**

- To:** Councillors Douglas (Chair), Boyce (Vice-Chair), Aspden, Crisp, D'Agorne, Funnell, Gillies, Gunnell, Hayes, Hunter, Mason, Mercer, D Myers, Orrell and Richardson
- Date:** Monday, 24 April 2017
- Time:** 4.00 pm
- Venue:** The Snow Room - Ground Floor, West Offices (G035)

AGENDA

1. Declarations of Interest

At this point in the meeting, Members are asked to declare:

- any personal interests not included on the Register of Interests
- any prejudicial interests or
- any disclosable pecuniary interests

which they may have in respect of business on this agenda.

2. Minutes (Pages 1 - 4)

To approve and sign the minutes of the meeting held on 13 March 2017.

3. Public Participation

At this point in the meeting members of the public who have registered their wish to speak regarding an item on the agenda or an issue within the Committee's remit can do so. The deadline for registering is **5:00 pm on Friday 21 April 2017**.

Filming or Recording Meetings

Residents are welcome to photograph, film or record Councillors and Officers at all meetings open to the press and public. This includes the use of social media reporting, i.e. tweeting. Anyone wishing to film, record or take photos at any public meeting should contact the Democracy Officer (contact details are at the foot of this agenda) in advance of the meeting.

The Council's protocol on Webcasting, Filming & Recording of Meetings ensures that these practices are carried out in a manner both respectful to the conduct of the meeting and all those present. It can be viewed at http://www.york.gov.uk/download/downloads/id/11406/protocol_f_or_webcasting_filming_and_recording_of_council_meetings_20160809.pdf

4. Request for Amendment to Taxi Licensing Policy

(Pages 5 - 12)

This report seeks Members determination of a request made by two private hire vehicle licence proprietors, who operate executive vehicles, in relation to the specification of vehicle windows.

5. Council's Constitution - Licensing Appeals (Pages 13 - 18)

This report seeks Members support for the approval to change the Council's Constitution in relation to the current procedure with regards to appeals relating to licensing decisions.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972.

Democracy Officer:

Name: Laura Clark

Contact Details:

- Telephone – (01904) 554538
- E-mail – Laura.Clark@york.gov.uk

For more information about any of the following please contact the Democracy Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports and
- For receiving reports in other formats

Contact details are set out above.

This information can be provided in your own language.

我們也用您們的語言提供這個信息 (Cantonese)

এই তথ্য আপনার নিজের ভাষায় দেয়া যেতে পারে। (Bengali)

Ta informacja może być dostarczona w twoim własnym języku. (Polish)

Bu bilgiyi kendi dilinizde almanız mümkündür. (Turkish)

یہ معلومات آپ کی اپنی زبان (بولی) میں بھی میا کی جاسکتی ہیں۔ (Urdu)

 **(01904) 551550**

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City of York Council

Committee Minutes

Meeting	Gambling, Licensing & Regulatory Committee
Date	13 March 2017
Present	Councillors Douglas (Chair), Aspden, Crisp, D'Agorne, Hayes, Hunter, Mercer, D Myers, Orrell and Richardson (Left at 4.30pm)
Apologies	Councillors Boyce (Vice-Chair), Funnell, Gillies, Gunnell and Mason

25. Declarations of Interest

Members were asked to declare any personal interests not included on the Register of Interests, any prejudicial interests or any disclosable pecuniary interests which they may have in respect of business on the agenda. None were declared.

26. Minutes

Some Members raised concerns with the level of detail included in the minutes dated 6 February 2017.

Resolved: That the minutes of the meeting held on 6 February 2017 be brought back to the next meeting for approval.

27. Public Participation

It was reported that there had been one registration to speak at the meeting under the Council's Public Participation Scheme on the following item:

4. Application to Register Land as a Town or Village Green

Mr Chris Barrett spoke, on behalf of Friends of Holgate Community Garden, over their concerns that this area may be the preferred access route for York Central. He also thanked CYC for consideration of the application.

28. Application to Register Land as a Town or Village Green

Members considered a report which asked them to determine an application to register land known as Holgate Community Garden and Play Park (also known as Upper St Paul's Terrace play area) as a town or village green.

Officers gave a brief background to the report and in response to points raised by Members stated that:

- It was Defra guidance that applicants did not have an automatic right to withdraw applications and that Registration Authorities had a discretion to determine applications when it is in the public interest to bring them to a conclusion.
- Use of the area applied for had been 'by right' as the Council held the land for the specific purpose of it being used as 'open space'. Therefore it could not lawfully be registered as a village green.
- It was not considered appropriate to refer the application to the Planning Inspectorate as both the applicants and Council as objector agreed that the application failed the statutory test for registration as a village green.
- There was no dispute between the applicants, the objectors and the Registration Authority that there was clear evidence that the use of land was 'by right' and not 'as of right' and that the application therefore failed on a point of law. This meant there was no disputed point of law to be independently determined, nor was it necessary to independently determine the subjective elements of the statutory test.
- The more subjective details of the application criteria, as described in paragraph 7 of the report, had not been assessed as regardless of determination of these elements of the statutory test, the application had failed the statutory requirement for usage 'as of right'.
- The application had come to this meeting as it was a function of this Committee to determine village green applications under the Council's Constitution.
- There had been no public consultation period akin to a planning application, as this was not a planning application, however interested parties had been contacted, signs had been posted in the local area and the issue had been covered in the Press in accordance with the relevant Regulations.

Officers clarified to Members that, should they be minded to choose Option 2 and not determine the application, that this could lead to a situation where the Objectors sought to judicially review that decision in order to seek a determination and therefore proper reasons should be given for choosing Option 2. They also reiterated that it was the responsibility of this Committee to determine applications brought before them. In this case it was for transparency purposes, rather than merely allowing the applicants to withdraw the application.

Members then considered the following Options:

1. Refuse the application.
2. To not determine the application.

Resolved: That Members not determine the application and no further action be taken.

Councillor Douglas, Chair

[The meeting started at 4.00 pm and finished at 4.45 pm].

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Gambling, Licensing & Regulatory Committee

24 April 2017

Report from the Assistant Director – Planning and Public Protection

Request for an amendment to the Taxi Licensing Policy relating to the specification of vehicle windows on executive vehicles

Summary

1. This report seeks Members determination of a request made by two private hire vehicle licence proprietors, who operate executive vehicles. The two proprietors have an Exemption Notice in line with the Council's recently approved Taxi Licensing Policy so that the executive vehicles do not have to display vehicle licence plates and signage. The proprietors now seek an amendment to the recently approved policy so that such executive vehicles also be exempt from the Council's vehicle windows condition (Condition 19, Appendix 2).

Recommendations

2. That Members approve Option 2 of this report.

Reason: The existing exemption from signage and vehicle licence plates is considered reasonable considering the circumstances for which executive vehicles are used. However, it is not considered that it is unreasonable to continue to require compliance with Condition 19 regarding windows, which was very recently endorsed by Members within the Taxi Licensing Policy. A full consultation was undertaken in relation to the Taxi Licensing Policy, and this issue was not raised at that time, (although the individuals now making the request were consulted on the Policy). Limited, informal consultation with the main trade associations has been carried out regarding the requested change, (in line with their request following the approval of the Taxi Licensing Policy) and there is no support for this change to the policy from them. It is considered that the cost of formal, full consultation in relation to the requested change at this time would be disproportionate in cost to the Licensing Authority, having regard to the recent policy, the views of the trade associations, and the public safety purpose of the condition relating to windows.

Following the introduction of the Taxi Licensing Policy representatives of the licence trade did request that they are formally consulted in relation to taxi licensing matters. Due to the Councils work with the West Yorkshire and York Combined Authority, over the next 12 months Officers will in any event be seeking the approval of this Committee to consult on matters resulting from this work relating to our Taxi Licensing Policy, and the request relating to the windows condition could instead form part of that future consultation process.

Background

3. The Council has approved conditions relating to vehicle specification (Taxi Licensing Policy Appendix 1), one of these conditions relates to the light transmittance of windows in all licensed hackney carriage and private hire vehicles. The condition being No 19:
 - i) All licensed vehicles shall be fitted with windscreen glass that has a light transmittance of 75% and windows to either side of the drivers head shall have a light transmittance of not less than 70%.
 - ii) All other windows within licensed vehicles shall have a light transmittance of not less than 50%.
 - iii) For estate-type vehicles the windows overlooking the luggage space can be of any manufacturer's tint providing it is not opaque.
 - iv) Any self applied material shall satisfy the requirements of i) ii) and iii) above if it has been approved by the Council.
4. Regulation 32 of the Road Vehicles (Construction and Use) Regulations 1986 requires the windscreen to have a minimum light transmission value of 75% and the windows to either side of the drivers head of not less than 70%.
5. As part of the review of the Taxi Licensing Policy, which was approved by this Committee on 23 April 2016, the light transmittance in relation to all other windows was reduced from 70% to 50% following representations received from the licensed trade.
6. On the 21 July 2014 this Committee approved an Exemption Policy in relation to the displaying of licence plates and signage on licensed private hire vehicles who exclusively undertake executive contract work (legislation only allows this provision in relation to private hire vehicles).

This exemption policy has been consolidated in the recently approved Taxi Licensing Policy, (at Appendix 2 to the Policy).

7. Two licensed private hire operators, who have vehicles that have been granted an Exemption Notice, have requested that the light transmittance window condition, (ii) above, should not apply to vehicles granted an Exemption Notice. They have requested that windows in executive vehicles can be any manufacturer's tint, due to the work they undertake. That the condition in relation to executive vehicles would state:
 - i) All licensed vehicles shall be fitted with windscreen glass that has a light transmittance of 75% and windows to either side of the drivers head shall have a light transmittance of not less than 70%.
 - ii) All other window can be of any manufacturer's tint.
 - iii) Any self applied material shall satisfy the requirements of i) and ii) above if it has been approved by the Council.
8. Both operators believe executive vehicles should be allowed 'privacy glass' due to:
 - the customers they carry expect privacy;
 - the vehicles they wish to provide come fitted with privacy glass;
 - all their work is pre-booked on account; and
 - other licensing authorities allowing privacy glass in executive vehicles.

Consultation

9. A formal consultation has not taken place due to the cost to the council, which would have to be met by the licensed trade. Officers have sought the views of the Hackney Carriage and Private Hire Associations, which are as follows:
 - Not sure how this will work, what happens when executive vehicles aren't doing executive work and start performing private hire jobs or are there exceptions in place to cover this? I think the existing ruling should be left in place to stop any arguments.
 - The reason heavily tinted windows are not allowed in Private Hire Vehicles and Hackney Carriages is that the authorities seem to think that the travelling public would be in some sort of danger if these were fitted. This has led to many vehicle owners having to spend

hundreds of pounds for replacement glass to satisfy this requirement.

- By allowing "executive" cars to have heavily tinted glass, you would be implying that the public are safer in an "executive" vehicle than a PHV or hackney vehicle, which is clearly nonsense.
- To relax the rules for one sector would be seen as unfair to all the other vehicle licensees. The restrictions should remain the same for all or remove the restriction for all.
- The problem you will find is that the automotive industry is making cars with tinted windows which is passed via approval for the British market so I do not see any reason why such a vehicle cannot or should not be licensed.
- With the automotive market at the moment it's very hard to find vehicles that do not have tinted windows therefore it's getting harder to source vehicles at affordable prices with certain regs in place.
- Purposed blacked out windows is another issue, these vehicles should not be licensed.
- So if the vehicle is submitted for licensing with tinted windows and it's being manufactured on a production line with tinted windows then I do not see any reason why this cannot be licensed.
- Selby for instance allow their vehicles to have tinted windows etc so I am led to believe.
- Most cars, especially the executive type vehicles, have tinted windows.
- Also all our checks should be sufficient to make sure all York city taxi drivers can carry the citizens and visitors to York safely.

10. Officers have also contacted Licensing Authorities in North and West Yorkshire with regards to their requirements, limited responses have been received (it could be view that other authorities have not responded as they do not have policies in place regarding executive vehicles):

Authority	Condition/Requirement
Scarborough BC	Have sufficiently transparent windows so as not to compromise road safety and comply with current legislation.

	<i>This condition applies to all licensed vehicles.</i>
Leeds CC	Glazing forward of the 'B' pillar shall comply with Construction and Use Regulation 32 with regard to the level of tint. A minimum light transmission value of 70% shall be maintained in the off side front and near side front windows. The windscreen shall have a minimum light transmission value of 75%. Tinted film applied to any window on the vehicle is not permitted. <i>This condition applies to executive vehicles only.</i>
Harrogate BC	No condition in place regarding window tints, only that they must be factory fitted.
Calderdale C	There are certain exemptions from some vehicle conditions, if the executive use licence is granted, these are: tinted windows, doors signs, rear plates
Kirklees C	All windows fitted to Kirklees Private Hire Vehicles MUST comply with the minimum legal requirements; to transmit 75% of light to the front windscreen and 21% light to all other vehicle windows. Further, all vehicles must meet required standards at annual testing. No tinted film is accepted on current licensed vehicles or new applications. <i>This condition applies to all licensed vehicles.</i>

Options

11. Option 1 – Approve full consultation to be carried out on amending the policy to include an exemption to standard condition 19 relating to windows for Executive Vehicles, and request that a report be brought back to Members to consider the proposed change and the results of consultation.
12. Option 2 – Take no action at this time, and advise Officers to consult on this matter at a time when the council are formally consulting on other matters relating to hackney carriage and private hire licensing.
13. Option 3 – Refuse this request outright.

Analysis

14. There are currently 587 private hire vehicles licensed by the Council, seven of these have been granted the Exemption Notice with regards to the displaying of licence plates and signage. There are also 183 licensed hackney carriage vehicles.
15. The condition relating to light transmittance of windows in licensed vehicles was introduced to maintain a high level of safety for the travelling public when using hackney carriage and private hire vehicles. To ensure that the Police, Council Enforcement Officers and members of the public can always see into a licensed vehicle in outside lighting conditions. This discourages crime from being carried out inside when they can easily see out of, and others can see into, the vehicle.
16. Option 1 is not recommended due to the disproportionate cost of carrying out a separate consultation process in relation to this issue, having regard to the very recent adoption of the Taxi Licensing Policy, (which included the individuals now making the request for further change), the public safety reason for imposing the condition relating to windows, and the views of the trade set out in this report.
17. Option 3 is not recommended as the Council intends to reconsult on the Taxi Licensing Policy in 12 months time following work with other authorities and this would present an opportunity to consult on the requested change at that time.
18. Option 2 is recommended for the reasons set out in the recommendation above at paragraph 2 to this report.

Council Priorities

19. The provision of hackney carriage and private hire licensing supports the council plan of a prosperous city for all, where local businesses can thrive.

Implications

20. The direct implications arising from this report are:
 - (a) **Financial** – There are no financial implications for the Council, there are however implications for the licensed trade due to the

cost incurred if windows have to be changed to meet our requirements.

- (b) **Human Resources (HR)** - There are no HR implications.
- (c) **Equalities** – There are no equalities implications.
- (d) **Legal** – There are no legal implications.
- (e) **Crime and Disorder** – There are no crime and disorder implications.
- (f) **Information Technology (IT)** - There are no IT implications.
- (g) **Property** - There are no property implications.
- (h) **Other** - There are no other implications.

Risk Management

21. There are no risks associated with this report. Private hire vehicle licence holders have a right of appeal to Magistrates Court against any conditions attached to the licence within 21 days of the licence being granted.

Contact Details

Author:		Chief Officer Responsible for the report:		
Lesley Cooke Licensing Manager (01904) 551515		Mike Slater Assistant Director – Planning and Public Protection		
Report Approved		√	Date	5 April 2017
Specialist Implications Officer(s)				
Senior Solicitor (01904) 551040				
Wards Affected:			All	√
For further information please contact the author of the report				

Background papers

Taxi Licensing Policy

https://www.york.gov.uk/downloads/download/3192/taxi_licensing_policy



Gambling, Licensing & Regulatory Committee

24 April 2017

Report from the Assistant Director – Planning and Public Protection

Council's Constitution - Licensing Appeals

Summary

1. This report seeks Members support for the approval to change the Council's Constitution in relation to the current procedure with regards to appeals relating to licensing decisions.
2. The report seeks a recommendation to Full Council that this change to the Constitution is approved.

Recommendations

3. That Members approve Option 1 of this report and recommend to Full Council that this new procedure is approved.

Reason: This will allow applicants/licence holders who are aggrieved by a decision made by an Officer of the Council to appeal that decision in line with the requirements of the relevant legislation.

Background

4. Who can do what in relation to decisions made by the Council is set out in the Delegation Scheme which is part of the Council's Constitution.
5. Within the Council's Constitution certain licensing decision are delegated to Officers, for example decisions to refuse hackney carriage and private hire vehicle, driver and operator licences, and to suspend or revoke these licences.
6. Within relevant legislation there is provision for an applicant or licence holder who is aggrieved by a decision made by an Officer on behalf of the Council, to appeal that decision to Magistrates Court.

7. The Council's Constitution also offers the applicant/licence holder the right of appeal to the Environmental Appeals Committee. Therefore the Council provides two rights of appeal.
8. The delegation to Council Committees and Other Bodies is dealt with in Section 3C of the Constitution. Part 6.4 of Section 3C details the functions which are delegated to the Environment Appeals Committee, in relation to this report these are:

No.	Delegated authority	Conditions
1	* To determine appeals against action taken by Officers in the grant, refusal, variation and revocation of licences, consents or permits issued where relevant legislation requires an appeals process to be available to the parties to the application.	
2	* To determine appeals against refusal to issue or revocation of a hackney carriage vehicle or drivers' licence, or private hire vehicle, drivers' or operators' licence.	Except on the grounds of quality control.

9. The current procedure followed by the Council if a licence application is refused, or a licence is revoked/suspended is to offer the applicant/licence holder both rights of appeal within the decision letter.
10. An appeal to the Environmental Appeals Committee must be made within 14 days of the decision notice being served. An appeal to the Magistrates Court must be made in accordance with the requirements of the legislation, which is normally within 21 days of the decision notice being served. The applicant/licence holder can only appeal the Officer decision; therefore if they only appeal to the Environmental Appeals Committee they do not have the right to then appeal that decision to the Magistrates Court.

Consultation

11. A consultation has not taken place in relation to this report.

Options

12. Option 1 – Recommend to Full Council that the Council's Constitution is changed and a new procedure for dealing with licensing appeals is approved. In line with the requirements of relevant legislation licence applicants and licence holders can appeal a decision made by Officers to refuse/suspend/revoke to the Magistrates Court, thereby no longer providing an internal appeals process.
13. Option 2 – Recommend to Full Council that a change to the Council's Constitution in relation to the internal appeals process is approved. Licence applicants and licence holders can appeal a decision made by Officers to refuse/suspend/revoke to a Sub-Committee of the Gambling, Licensing and Regulatory Committee. In line with the relevant legislation licence applicants/holders will also be able to appeal Officers decisions to Magistrates Court.
14. Option 3 – Take no further action.

Analysis

15. By removing points 1 and 2 in the table detailed in paragraph 8 above, applicants/licence holders will still have the right of appeal if they are aggrieved by a decision made by Officers; this right of appeal will be in accordance with the requirements of the relevant legislation.
16. Within the last 12 months the Council, by way of an Officer decision, has:
 - not refused any applications for licences;
 - suspended four licensed private hire driver licences, on the grounds of public safety (not meeting the Group 2 medical standard);
 - suspended two hackney carriage driver licences, on the grounds of public safety (not meeting the Group 2 medical standard);
 - suspended one hackney carriage driver licence, on the grounds of not currently been a fit and proper person;
 - suspended one hackney carriage vehicle licence, on the grounds of not completing the six month safety inspection;
 - revoked two licensed private hire driver licences, on the grounds of public safety.

17. There have been two appeals to the Environmental Appeals Committee by licence holders aggrieved by the Officer decision to revoke their driver licences. On each occasions Members upheld the decision made by Officers.
18. One of the licence holders aggrieved by the Officer decision to revoke their driver's licence has also appealed to Magistrates Court. This appeal has not being heard at this time.

Council Priorities

19. This will support the Council's plan of a prosperous city for all, where local businesses can thrive and a council that listens to residents.

Implications

20. The direct implications arising from this report are:
 - (a) **Financial** – There are no financial implications for the council.
 - (b) **Human Resources (HR)** - There are no HR implications.
 - (c) **Equalities** – There are no equalities implications.
 - (d) **Legal** – There is no legal requirement to offer an internal appeal in addition to the statutory rights to bring appeals before the Magistrates.
 - (e) **Crime and Disorder** – There are no crime and disorder implications.
 - (f) **Information Technology (IT)** - There are no IT implications.
 - (g) **Property** - There are no property implications.
 - (h) **Other** - There are no other implications.

Risk Management

21. There are no known risks associated with this report.

Contact Details

Author:		Chief Officer Responsible for the report:	
Lesley Cooke Licensing Manager (01904) 551515		Mike Slater Assistant Director – Planning and Public Protection	
Report Approved	√	Date	10/04/17
Specialist Implications Officer(s) Andrew Docherty Assistant Director – Legal & Governance (01904) 551004			
Wards Affected:		All	√
For further information please contact the author of the report			

Background papers

None

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