

Meeting Gambling, Licensing & Regulatory Committee

Date 11 February 2019

Present Councillors Lisle (Chair), Funnell (Vice-Chair), Boyce, Hayes, Hunter, Mason, Pavlovic, Reid, Richardson, D Taylor, Wells and Derbyshire

Apologies Councillors Cullwick, Douglas and Mercer

Part A - Matters Dealt with Under Delegated Powers

23. 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.

24. Minutes

Resolved: That the minutes of the meeting held on 6 November 2018 be approved as a correct record and signed by the Chair.

25. Public Participation

It was reported that there had been ten registrations to speak under the Council's Public Participation Scheme, although one resident had been unable to attend.

Gwen Swinburn spoke on the issue of DBS checks for drivers, the cancellation of the previous meeting of the Committee by Officers and the delay in giving the Committee the legal advice she had sought on the operation of UBER in the City. Finally she noted that there should be a work plan for the Committee, as this was best practice.

Colin Metcalfe, Secretary of the York Hackney Carriage Association, told the Committee that he felt this was becoming an Officer led Council and stressed the importance of not

ignoring the legal opinion the drivers had provided as UBER were operating illegally. He stated York should be the City to lead on tackling their operation.

Alan Rowley, a Member of the York Hackney Carriage Association, spoke on the differences between an operator and a driver in Taxi Licensing and how this worked in terms of allocating jobs. He stated that an operator needs to have a manned office within the controlled area, which UBER did not. Finally he stated that without meeting the triple licensing rule, drivers could not legally operate in the City and that UBER were doing so without challenge.

Steve Nelson, Vice Chair of the York Private Hire Association, stated that the legal opinion of CYC was wrong and went on to explain the restriction on where the vehicle was when receiving the booking. He also stated that it was his opinion that the Council were using the wrong interpretation of 'operate' and that a driver could only accept booking within their own licensed area.

Mark Jennings, the GMB President of Professional Drivers and Secretary of Southend Licensed Taxi Drivers Association spoke on Local Authorities having full control over the operation of Private Hire Vehicles in their area and how he felt this was not happening in York, as CYC did not want a legal battle with UBER. He stressed that it was essential to regulate what he saw as illegal operation as it was a potential safeguarding threat and left the Council open to prosecution.

Drew Thompson, Member of the York Private Hire Association, also spoke on UBER and the way they were undermining the Committee's decision to remove their licence by continuing to send out of town drivers. He stated that this was an ongoing issue for York, taking money out of the local economy and needed to be dealt with swiftly by Members.

Tony Green, Vice Chair of the York Hackney Carriage Association, spoke on the importance of ensuring public safety via enforcement action. He stated there was a lack of enforcement officers and that UBER were continuing to illegally ply for hire, which made any insurance drivers had null and void. Finally he stated that 83% of complaints about UBER were from local drivers and that failure to control this behaviour had led to a hostile atmosphere.

Wendy Loveday, Chair of the York Private Hire Association, spoke on the different ways in which York and Leeds were tackling UBER's operation. She stated that Leeds Council firmly stated that working in their City without an operator's licence was illegal and that they would prosecute, without exception, any non Leeds driver working without a pre booked job. Finally she stated that it was CYC's responsibility to enforce the law and prosecute drivers found to be doing the same thing in York.

Mike Palmer, Secretary of the York Private Hire Association, also spoke on the lack of enforcement action in relation to UBER's continued operation in the City. He stated that drivers had offered Officers free travel to assist them with enforcement. He said a change of policy was needed as drivers were continuing to come into York in poor quality vehicles, with no local knowledge, leading to a rising number of complaints. He stated that it was the responsibility of Members to hold this company accountable.

26. Renewal of Sex Establishment Licence for Upstairs (Mansion), 53-55 Micklegate, York, YO1 6LJ

Members considered an application for the renewal of a Sex Establishment Licence in respect of Upstairs (Mansion), 53-55 Micklegate, York.

In coming to their decision, the Committee took into consideration all the evidence and submissions that were presented as follows:

The Licensing Manager's report and her comments made at the meeting. She advised that the application was for the renewal of a Sex Establishment Licence in line with Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, as amended by Section 27 of the Policing and Crime Act 2009, which allowed local authorities to regulate lap dancing clubs and similar venues. She outlined the report and annexes, noting the opening hours of the venue. She reported that consultation had been carried out correctly and that no objections had been received.

The Licensing Manager then outlined discretionary grounds for the refusal of an application for a sex establishment licence.

The application form.

In respect of the proposed licence, the Committee had to determine whether to take any of the steps mentioned under paragraphs 10, 12 and 13 of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), that it considered necessary.

Members were presented with the following options:

- Option 1 Grant a renewal of the licence as requested. This option was **approved**.
- Option 2 Renew the licence with modified/additional conditions imposed by the licensing committee. This option was **rejected**.
- Option 3 Refuse the application for renewal on one of the mandatory grounds or on one or more of the discretionary grounds within paragraph 12 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended). This option was **rejected**.

Reason for the Decision:

In reaching the decision the Committee noted that the business had operated without complaint.

27. Update Report - Private Hire Licensing

Members considered a report which explained the Council's present position regarding the interpretation of the law relating to private hire licensing and the ability to work outside the area within which they are licensed. An alternative interpretation of the law had been put forward by members of the licence trade and the opinion of their legal adviser was attached for Members information at Annex 1.

The Head of Public Protection and Senior Solicitor attended the meeting to present the report and answer Member questions. They highlighted paragraph 4 of the report and stated that the taxi trade within the City had provided an alternative legal opinion which, as of now, was an untested opinion. They went on to explain that the Council had sought their own external advice and this opinion had been awaiting the outcome of two

pending cases in Brighton and Reading. This would be ready by the following week.

In response to Member questions they stated:

- They believed there were enough enforcement staff, but explained it was hard for them to always be 'in the right place, at the right time' and they did rely on reports from the taxi trade, which were welcomed;
- There were ongoing prosecutions following enforcement action;
- The cases pending in terms of the legal opinion sought by the Council were in court after appeals from Magistrate's Court, and were on the same principles and issues as in York;
- The cases were an informative. Settled law was based on judicial decisions made in Court;
- The judgement in Reading was made the week before this meeting and the Counsel instructed by CYC was now in a position to finalise their advice; and
- The decision in response to that legal advice would be for Members, at this Committee and Executive, on advice from Officers.

During debate Members stated that it was always hard for enforcement Officers to be in the right place and that in all cases CYC relied on the support of the public in reporting breaches.

They were clear that this legal opinion needed to be brought to this Committee in March so that Members could make a decision pre- election and reassure both the trade and the public. It was then agreed

Resolved: That the report be noted.

Reason: To update the Committee on the Council's present position regarding the interpretation of the law relating to private hire licensing and the ability to work outside the area within which they are licensed.

Part B - Matters Referred to Council

28. Statement of Licensing Policy & Cumulative Impact Assessment

In accordance with the requirements of Section 5 of the Licensing Act 2003 (the 2003 Act), Members considered a report which sought their support of the formal review of the council's Statement of Licensing Policy. The report advised Members of the consultation undertaken and of the amendments made as a result of changes to legislation and revised guidance.

The report also sought Members support for the implementation of a Cumulative Impact Assessment in relation to part of the city centre (In accordance with the requirements of Section 5A of the 2003 Act) and the report advised them of the consultation undertaken.

The report sought a recommendation to Full Council that the draft Statement of Licensing Policy and Cumulative Impact Assessment be adopted.

The Licensing Manager presented the report and explained that the North Yorkshire Police Force Licensing Officer was in attendance to answer any questions Members may have on Cumulative Impact Assessment report.

In response to Member questions they stated:

- The report from the Police had been considered very closely. Patterns of behaviour did shift and the areas covered were under constant review;
- Reporting methods had changed and there was also a national increase in crime, but this remained one of the safest counties;
- The Cumulative Impact Assessment was evidence based and if the evidence was not there an area could not be included within the Controlled Area;
- The 'Top Tier' streets in the report were based on calls for service to the Police. This did not directly correlate with the red area on the map as that was created by plotting calls for service that were relevant to the Licensing Act;

- Due to policing numbers it was important to identify 'hot spots' and this was constantly under review. In relation to the train station the police worked closely with British Transport Police. There was also a Public Space Protection Order covering the city centre which includes the station;
- In relation to changes proposed to Micklegate and the suggestion to turn half the road into 'pavement cafes', all applications for outdoor seating would be reviewed on their own merits, against the Licensing Objectives; and
- All new and variation applications within CIA, especially the 'red zone', would have to demonstrate why the licence should be granted, as there would be a rebuttal presumption to refuse.

Members requested that the map be amended to consider the boundaries of properties within the zone. Officers stated that this would be discussed with the Police Force Licensing Officer.

It was agreed that this Committee recommend to Council

Recommended: That the draft Statement of Licensing Policy and Cumulative Impact Assessment be adopted.

Reason: To reflect the result of the consultation and meet legislative requirements.

Cllr S Lisle, Chair

[The meeting started at 4.00 pm and finished at 5.55 pm].