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Meeting	Licensing and Regulatory Committee
Date	4 September 2019
Present	Councillors Mason (Chair), Wells (Vice-Chair), Barker, Cuthbertson, Galvin, Hook, Hunter, Norman, Orrell, Pearson, D Taylor and Warters
Apologies	Councillors Fitzpatrick, Melly and D Myers

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## **8. 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 that they may have in respect of business on the agenda. Cllr Cuthbertson declared a personal non pecuniary interest as a Director of City of York Trading (CYT) Ltd. No further interests were declared.

## **9. EXCLUSION OF PRESS AND PUBLIC**

Resolved: That the public and press be excluded from the meeting during consideration of Annex 3 to Agenda item 6 on the grounds that it contained information relating in respect of which a claim to legal professional privilege could be maintained in legal proceedings. This information is classed as exempt under Paragraph 5 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

## **10. MINUTES**

Resolved: That, subject to the amendments to the 18 March minutes agreed at the 15 July meeting, the meetings held on 18 March 2019 and 15 July 2019 be approved as a correct record and signed by the Chair.

**11. RENEWAL OF SEX ESTABLISHMENT LICENCE FOR BLACK ORCHID (1ST FLOOR TOKYO), 3-5 TOFT GREEN, YORK, YO1 6JT**

Members considered a report seeking determination of an application to renew a Sex Establishment Licence for a Sexual Entertainment Venue (SEV) which had been made under the Local Government (Miscellaneous Provisions) Act 1982, Schedule 3 Control of Sex Establishments in respect of Black Orchid, 3-5 Toft Green, York, YO1 6JT York.

The Licensing Manager 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 allows local authorities to regulate lap dancing clubs and similar venues. She outlined the report and annexes, noting the grounds for refusal of which there were no mandatory grounds for refusal. She outlined the options available to Members in determining the application. She was asked and clarified the operating hours of the venue.

By virtue of paragraphs 10, 12 and 13 of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 (as amended), the Committee had the following options available to them in making their decision:

- Option 1 Grant a renewal of the licence as requested.
- Option 2 Renew the licence with modified/additional conditions imposed by the licensing committee.
- 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).

Resolved: That, in accordance with Option 1, Members grant a renewal of the licence as requested.

Reason: To consider renewal of the sex establishment licence as required by the legislation.

## **12. TAXI ACCOUNT UP TO 31 MARCH 2019**

The Committee considered an information only report giving Members details of the taxi licensing account as requested at the last Committee meeting. The Head of Public Protection outlined the report highlighting the following points:

- There was a surplus of £74,500 and some of the carry forward from this was planned expenditure.
- The spending on employment agency staff was high due to the staffing needed to undertake background checks for drivers and for cover during the recruitment freeze.

Following an overview of the report, the Head of Public Protection was asked and clarified that:

- Agency staff had been carrying out the criminal background checks for drivers.
- The budget surplus had grown over a number of years.
- It was hoped the new Licensing Manager post would be recruited after Christmas.
- The budget surplus from fees could not be used to pay for enforcement. An explanation of the mechanism for reviewing fees was given.

Resolved: That the information on the Taxi Account up to 31 March 2019 be noted.

Reason: In order to be updated on the taxi licensing account.

## **13. PUBLIC PARTICIPATION**

It was reported that there had been three registrations to speak at the meeting under the Council's Public Participation Scheme. All three speakers spoke on Agenda Items 5 and 6.

Gwen Swinburn noted that over £300,000 had been paid in taxi fees and there was minimal enforcement. She requested that information be provided on how much staff time was spent on taxi related matters. She was pleased to see the Forward Plan on the meeting agenda, especially the 6 monthly KPI information and she added that a full list of licences was required.

Drew Thompson spoke on the potential action against Uber. He explained that Brentwood Council had asked Uber to apply for an operator's licence, which Uber refused. He stated that Uber should only operate where they had an operator's licence. He then updated Committee on a meeting regarding potential for legal action against Uber, which had been attended by six Councils and for which a number of other Councils had shown interest. He ended by referring to the Reading judgement.

Wendy Loveday explained that Option 2 of the report was the better option and the only option to protect the York public. She explained the reasons for this.

#### **14. INTERPRETATION OF LAW - 'OUT OF TOWN' LICENCES**

Members considered a covering report that introduced the 'Executive report' (Appendix A) which was a draft of the report to be considered by the Executive on 26 September 2019. The Executive report concerned the council's interpretation of the law relating to the ability of private hire operators and drivers to work their vehicles outside of the area within which they are licensed (often referred to as 'out of town' operators/drivers/vehicles). The consideration of the report provided an opportunity for the comments of the Committee to be added to the report to be presented to the Executive on 26 September.

The Head of Public Protection outlined the report explaining the two options to the Committee. The Interim Assistant Director for Legal and Governance clarified that Uber drivers were not licensed in York and that those working in York were licensed by different authorities. She noted that the method Uber adopted for bookings did not mean they were operating in York. She confirmed that she was happy with the legal advice that had been given.

Following the overview of the report and options, Members raised a number of questions to which the following Officer responses were noted:

- There was some merit in councils coming together to lobby the government.
- Officers were satisfied with the advice given by their legal counsel as this took into account the most recent case law.

- It was not thought that the six councils attending the meeting about Uber would be taking class action. It was confirmed that Cllr Waller had attended the meeting.
- The monetary risk in terms of action being taken would depend on the nature of the prosecution – the higher the court that resolved the issue, the higher the cost.
- The issue was not related to drivers and was in relation to out of town operators.
- Any prosecution would only take place after an investigation and thereafter the authority would address whether it was in the public interest to prosecute. The council would need to be consistent in its approach.
- There was a level of risk with option 1 and it was difficult to assess the legal costs. The council was less likely to be facing costs with option 1.
- Enforcement Officers were reliant on the trade reporting matters of concern to Public Protection.
- There was now a stronger network in the licensing authorities and if drivers came from neighbouring authorities they would be subject to the same licensing conditions.
- The mechanism for the triple lock check was explained.
- The sanctions that could be used against private hire firms using taxi ranks was outlined.
- A letter had been sent to the Minister for Transport requesting that a review be undertaken to which a response had been received explaining that this was being examined by the task group.
- There was a wider concern that out of town drivers were not subject to the York licensing conditions which led to a wider concern about the suitability of those drivers.
- Clarification was given on the decision of the Committee in December 2017 that Uber were not fit and proper.

During debate Members noted that the report to Executive should include the following comments:

- There is a need for increased enforcement
- An assessment of the climate change implications from out of town taxis be made
- The Department for Transport be lobbied to bring in legislation
- There are concerns about out of town drivers not having local knowledge of the roads

Resolved: That:

- i. The report to Executive includes the comments from the Committee as detailed above.
- ii. The Committee recommend to Executive to follow Option 1, namely that the settled legal position remains with no changes required to the Taxi Licensing Policy.

Reason: To provide clarity for the public in relation to the council's interpretation of the law.

## **15. REVIEW OF POLLING DISTRICTS, POLLING PLACES AND POLLING STATIONS**

Members considered a report that informed them of the duty on all local authorities to carry out a review of polling districts, polling places and polling stations in their area within five years, as laid down by the Electoral Registration and Administration Act 2013. During debate it was suggested that schools should be avoided as use for Polling Stations. Members were encouraged to feedback into the consultation. The Interim Assistant Director for Legal and Governance was asked and explained what a double Polling Station and she confirmed that the Polling Station district boundaries could be examined.

Resolved: That Members note the report.

Reason: To comply with statutory requirements.

**16. WORK PLAN 2019/20**

Members considered the Work Plan 2019-20. It was noted that the Chair and Licensing Manager would be meeting to discuss the work plan.

Resolved: That the work plan be discussed by the Chair and Licensing Manager.

Reason: To keep the Committee's work plan updated.

Cllr A Mason, Chair

[The meeting started at 5.30 pm and finished at 7.55 pm].