

**Notice of meeting of
Licensing & Regulatory Committee**

To: Councillors Firth, Gillies (Chair), Horton, Looker and Moore (Vice-Chair)

Date: Friday, 2 July 2010

Time: 2.00 pm

Venue: Guildhall

AGENDA

1. Declarations of Interest

At this point, Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 1 - 6)

To approve and sign the minutes of the meeting held on 5 March 2010.

3. Exclusion of Press and Public

To consider excluding the public and press from the meeting during consideration of agenda item 5 on the grounds that it contains information relating to the financial or business affairs of a particular person. This information is classed as exempt under Paragraphs 1 and 3 of Schedule 12A to Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order 2006.

4. 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 Thursday 1st July 2010.**

**5. Application to Renew a Hackney Carriage (Pages 7 - 38)
Vehicle Licence.**

Members are asked to determine the renewal of a Hackney Carriage Vehicle Licence where there is a dispute between parties as to whose name should be entered on the Licence.

**6. Regulation of Sexual Entertainment (Pages 39 - 44)
Venues.**

This report advises Members of the introduction of Section 27 of the Policing and Crime Act 2009. The Act introduces adoptive provisions that allow Local Authorities to regulate lap dancing clubs and similar venues under the same regime as sex shops and sex cinemas. This report asks Members if they wish to adopt those licensing provisions and if so, by what mechanism.

**7. Any other business which the Chair decides is
urgent under the Local Government Act 1972.**

Democracy Officer:

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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

City of York Council

Committee Minutes

MEETING	LICENSING & REGULATORY COMMITTEE
DATE	5 MARCH 2010
PRESENT	COUNCILLORS FIRTH, GILLIES (CHAIR), HORTON, MOORE (VICE-CHAIR) AND B WATSON (SUBSTITUTE)
APOLOGIES	COUNCILLORS LOOKER

31. DECLARATIONS OF INTEREST

At this point in the meeting Members were asked to declare any personal or prejudicial interests in the business on the agenda. None were declared.

32. MINUTES

RESOLVED: That the minutes of the meeting held on 8 January 2010 were approved and signed by the Chair as a correct record.

33. PUBLIC PARTICIPATION

It was reported that there had been one registration to speak.

Councillor D'Agorne had registered to speak on item 4.

34. APPLICATION TO REGISTER LAND KNOWN AS FULFORD CROSS AS A TOWN OR VILLAGE GREEN.

Members considered a report which outlined a village green application. The application had been made under Section 13 of the Commons Registration Act 1965 ("the 1965 Act) to register land known as Fulford Cross Green, York as a town or village green.

The procedure for submitting and determining an application is set out in The Commons Registration (New Land) Regulations 1969 and was detailed at page 7 of the agenda.

Officers provided an update which informed Members of the following information and amendments:

- The application had been made by Dr. Fiona Johnson in 2003 who since then had been absent. No other supporters had been willing to pursue the matter.
- The Council had an obligation to pursue the application.
- It is a legal decision not a matter of policy.

- The application must be refused if any of the elements are not met.
- The Commons Registration Officer then advised that she had managed to make contact with the applicant Dr. Johnson that morning. Dr. Johnson had agreed she should have notified the Council of her whereabouts. When advised of the conclusion, Dr. Johnson had not agreed with the reference to the lack of conclusive evidence for 20 years use of the land.

The following amendments to the report were highlighted:

- Page 11 of the agenda, last paragraph should be amended to read “as to whether it was ever possible to imply a licence by a landowner to use the land, which could be a use as of right..”
- Page 12 of the agenda, section E be amended to read “ A period of at least 20 years and continuing up to the date of application”

Councillor D'Agorne spoke as Ward Councillor. He stated that he was disappointed that he had not been informed that the application for Fulford Cross was being brought to this meeting and felt more could have been done by the Council to keep himself and local residents informed. He advised that following the Legal Officer's update he accepted the legal position although he did not agree with the recommendation to refuse the application.

In response, the Assistant Director of City Strategy (Planning and Sustainable Development) advised that there had been no desire to conduct the matter in a secretive manner. In future Officers will ensure that Ward Councillors are informed on any such applications.

The applicant was not present and no representative was in attendance for the applicant. Martin Blythe, Legal Representative, was present to speak on behalf of the Registration Authority. In reference to the criteria detailed at page 7 of the agenda numbered 1 to 6, he advised he had no comment against criterion 4 and 6. In relation to the following criteria, it was argued as follows:

- Criterion 1 - the applicant had failed to demonstrate that a significant number of the inhabitants of the neighbourhood within the locality had used the application site.
- Criterion 2 – the majority of users live within a cohesive neighbourhood in the vicinity of the application land, rather than a locality as the applicant suggests.
- Criterion 3 – Insufficient evidence provided by the applicant to satisfy this criterion 'Have indulged as of right'.
- Criterion 5 – Applicant is unable to demonstrate uninterrupted use of the application land for the 20 year period prior to 31 August as the site had been actively managed by the Council and the nearby Fulford Cross school.

In answer to Committee Members questions Officers responded as follows:

- Local residents had been aware of the application. All local residents who had submitted a User Evidence Questionnaire had been written to and asked if they would take the application over.
- The Legal Officer confirmed there is no obligation to inform Ward Members as it is a legal process and the responsibility of the applicant to prove the claim.
- The application had taken 7 years to get to this stage due to the applicant being un-contactable since 2006. Had the applicant being involved or another individual being willing to take over the application then it may have gone to enquiry. As the application was not pursued by the applicant, the Council progressed other village green applications first which were being pursued.
- The applicant must show that the claimed land is within a neighbourhood or locality. In this case, the applicant claimed the land to be within a neighbourhood within a locality.

After discussions, Members decided that as it was doubtful as to whether three of the 6 criterion had been met by the applicant, and as the applicant had not pursued the application, nor had any other supporters taken over the application, then the Officers recommendation of refusal was supported.

RESOLVED: That the application be refused.

REASON: It was considered that there is insufficient evidence to satisfy that all the necessary elements of the registration criteria have been satisfied, in particular that it is not satisfied that usage of the application land for recreational sports and pastimes was by a significant number of the inhabitants of the neighbourhood as of right and occurred for 20 years.

35. SUITABILITY CRITERIA FOR NEW HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS.

Members considered a report which requested them to consider approving the consolidation of policies and procedures and the updating and amending of procedures relating to the licensing of hackney carriage and private hire drivers.

Legislation requires that a local authority should not grant a licence to any person to drive a licensed hackney carriage or private hire vehicle unless satisfied that the person is fit and proper to hold such a licence. The applicant must also have held a driving licence for at least 12 months. In determining if an applicant is fit and proper, licensing authorities apply the following criteria; eligibility to work, relevant criminal convictions, medical fitness, topographical and licensing knowledge, references and driving ability.

Officers presented the report and asked members to note the following proposed changes:

- Remove the requirement for an applicant to supply two references. The introduction of the enhanced CRB check ensures a thorough check on an individuals identity and comments made by individuals known by the applicant have served little purpose.
- Introduction of a new requirement for applicants to undergo web based equality training which provides information and seeks solutions to practical scenarios. This would be available from 1st April 2010 and Officers would like applicants to successfully complete the Driver Equality Training level 1. Once successfully completed applicant will need to print off a pass certificate.

Members commented it may be useful to produce a checklist for applicants and officers to ensure that applicants have met all the requirements, and were happy to approved the recommendation.

RESOLVED: That Members approved Option 1 and agreed to the amendment of the criteria and licensing procedures in line with those set out at paragraphs 4 to 25 of the officers report in relation to the licensing of hackney carriage and private hire drivers.

REASON: To ensure that all drivers licensed by this authority are fit and proper to hold a hackney carriage or private hire driver's licence.

36. COMPETENCY ASSESSMENT AND DISABILITY EQUALITY TRAINING FOR DRIVER'S OF WHEELCHAIR ACCESSIBLE HACKNEY CARRIAGES AND PRIVATE HIRE VEHICLES.

Members considered a report which sought approval for the introduction of an assessment of competency for the drivers of all licensed hackney carriage and private hire wheelchair accessible vehicles.

Officers advised that at present there was no provision in place to provide training or any assessment of competency relating to the safe transportation of disabled passengers in wheelchairs. After examining various training and assessment schemes available, Officers had decided that the minimum level of competency in the handling of wheelchairs should be the Driving Standards Agency (DSA) wheelchair exercise.

Members queried whether Officers had put a date to the Taxi Associations, by which the amendments would become compulsory for all new drivers. Officers advised that they would need to consult with the trade regarding this and bring a report back to the Committee at a future date.

RESOLVED: (i) That Members approved Options 1 and 2 and added the following vehicle licence conditions for hackney carriage and private hire vehicles at their next renewal:

Where the licensed vehicle is so constructed or adapted as to be a wheelchair accessible vehicle it shall only be driven by a licensed driver who has:

- a) Completed and passed the Driving Standards Agency wheelchair exercise or equivalent, and
 - b) Completed and passed the City of York Council Disability Equality Training Level 1 (Taxi) or equivalent.
- (ii) That Officers will consult the taxi trade regarding the introduction of the training for all new drivers by a set date and bring a report to the Committee.¹

REASON: To ensure that the trade are informed of any developments regarding conditions relating to wheelchair reliant passengers when travelling in licensed hackney carriage and private hire vehicles.

Action Required

1. Officers prepare report for future meeting following consultation with taxi trade.

DH

37. AMENDMENTS TO HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING CRITERIA.

Members considered a report which asked them to consider amending the Council's existing policy for hackney carriage and private hire vehicle inspection requirements in relation to the carrying of a spare wheel.

Currently, hackney and private hire vehicles are inspected at the Council workshop and the inspection conforms to the standards of the MOT test requirements. In addition there are over 24 conditions which must be complied with, including the condition that a spare wheel must be carried at all times with the appropriate tools to change a wheel.

Officers advised Members that many new vehicles are now being manufactured without spare wheels and are instead being supplied with a space-saver tyre or puncture repair kit. To reflect these changes, Officers

outlined the proposed amendments to the licensing criteria, as detailed at page 58 of the agenda.

Members agreed the changes were sensible in light of the developments in the motor manufacturing industry and approved the amendments to the taxi licensing criteria.

RESOLVED: That Members approved Option 2 and hackney and private hire vehicle licence criteria and inspection be amended so as to include the conditions set out at paragraph 6 of the officers report.

REASON: To ensure that hackney carriage and private hire vehicle criteria and inspection procedures are in line with developments in the motor trade.

Councillor Gillies, Chair

[The meeting started at 2.00 pm and finished at 3.00 pm].

By virtue of paragraph(s) 1, 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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Licensing and Regulatory Committee

2 July 2010

Report of the Director of Communities and Neighbourhoods

REGULATION OF SEXUAL ENTERTAINMENT VENUES

Summary

1. This report advises members of the introduction of section 27 of the Policing and Crime Act 2009. The Act introduces adoptive provisions that allow local authorities to regulate lap dancing clubs and similar venues under the same regime as sex shops and sex cinemas. This report asks members if they wish to adopt those licensing provisions and if so by what mechanism.

Background

2. The increase in the number of lap dancing clubs in recent years has become an issue of concern for many local communities across England and Wales. The controls that previously existed were under the Licensing Act 2003 which essentially is a light touch for the granting of licences with a presumption that they should be granted
3. In June 2008 the Department for the Culture, Media and Sport, wrote to the chief executives of local authorities to clarify how they viewed the powers available to them under the 2003 Act and to seek their views on whether these, and other controls, were sufficient to address the concerns of local people and businesses. The majority of those who responded, including this authority, felt that additional legislation should be introduced to provide controls that are specific to lap dancing clubs and similar premises. This approach was also supported by a wide range of stakeholders including the Local Government Association, the National Organisation of Residents' Associations and the campaign groups Object and the Fawcett Society.
4. As a result of the consultation the Government enacted the Policing and Crime Act 2009. Section 27 became operative on 6 April 2010 and reclassified lap dancing clubs and other similar venues as 'sex establishments' under Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982. They are classified as "sexual entertainment venues".
5. Sexual entertainment venues are defined as "any premises at which relevant entertainment is provided for a live audience for the financial gain of the organiser or performer". The meaning of relevant entertainment is "any live performance or live display of nudity which is of such a nature that, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other

means)".

6. In summary Schedule 3 to the 1982 Act :
 - Allows local authorities to adopt the legislation.
 - Allows local people to oppose an application for a sex establishment licence if they have legitimate concerns that a lap dancing club would be inappropriate given the character of an area because, for example, the area was primarily a residential area. (There is an exemption for premises that provide such entertainment on an infrequent basis).
 - Requires licences to be renewed at least yearly, at which point local people will have the opportunity to raise objections with the local authority.
 - Allows a local authority to reject a licence application if they believe that to grant a licence for a lap dancing club would be inappropriate given the character of a particular area.
 - Allows a local authority to set a limit on the number of sexual entertainment venues that they think appropriate for a particular area.
 - Allows a local authority to impose a wider range of conditions on the licences of lap dancing clubs than they are currently able to under the 2003 Act.

Procedures for adoption

7. The local authority cannot operate these licensing controls without first adopting the provisions introduced by section 27. The adoption procedure is as follows:
 - Resolution by full council to adopt
 - Date of commencement specified, at least one month ahead
 - Notice published in local newspaper for 2 consecutive weeks
 - First publication no later than 28 days before the date of commencement
 - Notice to state effect of resolution
8. If the local authority adopted these provisions transitional arrangements apply to already existing sexual entertainment premises giving them up to 1 year to apply from the date of adoption of the provisions. Any new premises will require a licence under the 1982 Act before they can operate.
9. Should the authority resolve to adopt the provisions for the licensing of sex entertainment venues introduced by section 27 it may consider to adopt a policy to guide its operation. Such a policy would:
 - Set out the approach to licensing for the benefit of operators
 - Guide and re-assure the public and other public authorities
 - Ensure transparency
 - Ensure consistency

- Guide and focus members
10. If members determine to adopt the licensing provisions and indicate that they wish to consider applying a policy that would be the subject of a further report.

Consultation

11. At this stage no public consultation has been carried out on the adoption of these provisions. The views of the owners of the two existing venues likely to be covered by this legislation have been sought and will be reported at the meeting.

Options

12. The local authority has three options in relation to the adoption of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 with regard to the licensing of sex entertainment venues.

Option 1: To resolve to adopt the provisions from a date to be determined.

Option 2: To immediately undertake consultation with local residents and businesses as to whether the council should make such resolution.

Option 3: To undertake public consultation as above at a future date not being later than 5 April 2011.

Analysis

13. The City of York adopted the provisions of schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 for the whole of its area from 14 October 1999 in respect of the licensing of sex establishments (sex shops and sex cinemas).
14. York has two premises that would require licensing as sexual entertainment venues, both in Micklegate. They are licensed under the Licensing Act 2003. They have operated without problems since opening 3 and 4 years ago.
15. There is no overriding reason to adopt the new licensing provisions in respect of these established businesses. What the new regime would give is much greater control with respect to any applications for new premises.
16. The local authority may resolve to adopt the provisions introduced by section 27 without any form of consultation. It cannot however choose not to adopt the provisions without first considering the views of local people. This must be done within one year of the legislation coming into force.
17. Should members determine to enter into consultation at this time then it can be carried out alongside that in relation to the triennial review of the Statement of

Licensing Policy under the Licensing Act 2003. A report back would then be made to this committee in November 2010.

18. A decision to defer consultation until later in the year would not be cost effective as it would need to be a separate exercise.
19. In determining a date for the adoptive provisions to come into force, sufficient time should be allowed for the formulation of a policy should members decide that such a policy is required and for the approval of full council.
20. Officers recommend in this report that the council adopt the provisions of section 27 without public consultation as it is an extension to the already adopted provisions for sex establishments. If members approve this recommendation then a report will be submitted to the November meeting of this committee on the adoption of a policy as outlined in paragraph 9 of this report.

Corporate Strategy

21. The effective exercise of the licensing legislation and guidance notes ensures the licensing function will impact on the council's priority to reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.

Implications

22. **Financial:** The cost of administering the licensing scheme can be recovered through licence fees. There would be no additional cost to the council.

Human Resources (HR): None

Equalities: None

Legal: In carrying out its licensing functions, the Licensing Authority must have regard to all legislation.

Crime and Disorder: The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authorities responsibility to co-operate in the reduction of crime and disorder in the city.

Information Technology (IT): None

Property: None

Other: None

Risk Management

24. In compliance with the Council's risk management strategy any decisions made which are unreasonable or unlawful could be open to legal challenge resulting in

loss of image, reputation and potential financial penalty.

Recommendation

- 25. That members resolve to recommend to full council that this authority pass a resolution that the amendments made to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 by section 27 of the Policing and Crime Act 2009 shall apply to the administrative area of the City of York from 1 December 2010.
- 26. Reason: To provide additional controls for the licensing of lap dancing clubs and other sexual entertainment venues in respect to existing and any potential new establishments.

Contact Details

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Communities and
Neighbourhoods

Report Approved Date 11/06/10

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Wards Affected:

All

For further information please contact the author of the report

Background Papers

Policing and Crime Act 2009
Local Government (Miscellaneous Provisions) Act 1982

Annexes

None

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