

additional papers 1

Licensing Committee

Mon 25th Jan
2010
7.00 pm

Committee Room 2
Town Hall
Redditch



www.redditchbc.gov.uk

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- In addition, the public now has a right to be present when the Council determines “Key Decisions” unless the business would disclose confidential or “exempt” information.
- Unless otherwise stated, all items of business before the Executive Committee are Key Decisions.
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If you have any queries on this Agenda or any of the decisions taken or wish to exercise any of the above rights of access to information, please contact

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Welcome to today's meeting.

Guidance for the Public

Agenda Papers

The **Agenda List** at the front of the Agenda summarises the issues to be discussed and is followed by the Officers' full supporting **Reports**.

Chair

The Chair is responsible for the proper conduct of the meeting. Generally to one side of the Chair is the Committee Support Officer who gives advice on the proper conduct of the meeting and ensures that the debate and the decisions are properly recorded. On the Chair's other side are the relevant Council Officers. The Councillors ("Members") of the Committee occupy the remaining seats around the table.

Running Order

Items will normally be taken in the order printed but, in particular circumstances, the Chair may agree to vary the order.

Refreshments : tea, coffee and water are normally available at meetings - please serve yourself.

Decisions

Decisions at the meeting will be taken by the **Councillors** who are the democratically elected representatives. They are advised by **Officers** who are paid professionals and do not have a vote.

Members of the Public

Members of the public may, by prior arrangement, speak at meetings of the Council or its Committees. Specific procedures exist for Appeals Hearings or for meetings involving Licence or Planning Applications. For further information on this point, please speak to the Committee Support Officer.

Special Arrangements

If you have any particular needs, please contact the Committee Support Officer.

Infra-red devices for the hearing impaired are available on request at the meeting. Other facilities may require prior arrangement.

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If you discover a fire, inform a member of staff or operate the nearest alarm call point (wall mounted red rectangular box). In the event of the fire alarm sounding, leave the building immediately following the fire exit signs. Officers have been appointed with responsibility to ensure that all visitors are escorted from the building.

Do Not stop to collect personal belongings.

Do Not use lifts.

Do Not re-enter the building until told to do so.

The emergency Assembly Area is on Walter Stranz Square.

Declaration of Interests: Guidance for Councillors

DO I HAVE A "PERSONAL INTEREST" ?

- Where the item relates or is likely to affect your **registered interests** (what you have declared on the formal Register of Interests)

OR

- Where a decision in relation to the item might reasonably be regarded as affecting **your own** well-being or financial position, or that of your **family**, or your **close associates** more than most other people affected by the issue,

you have a personal interest.

WHAT MUST I DO? **Declare the existence, and nature, of your interest and stay**

- The declaration must relate to specific business being decided - a general scattergun approach is not needed
- **Exception** - where interest arises only because of your membership of another **public body**, there is no need to declare unless you **speak** on the matter.
- You **can vote** on the matter.

IS IT A "PREJUDICIAL INTEREST" ?

In general only if:-

- It is a personal interest **and**
- The item affects your **financial position** (or conveys other benefits), or the position of your **family, close associates** or bodies through which you have a **registered interest** (or relates to the exercise of **regulatory functions** in relation to these groups)

and

- A member of public, with knowledge of the relevant facts, would reasonably believe the interest was likely to **prejudice** your judgement of the public interest.

WHAT MUST I DO? **Declare and Withdraw**

BUT you may make representations to the meeting before withdrawing, **if** the public have similar rights (such as the right to speak at Planning Committee).



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Committee

25th January 2010

7.00 pm

Committee Room 2 Town Hall

Agenda

Membership:

Cllrs: M Braley (Chair) W Hartnett
K Banks (Vice- N Hicks
Chair) D Hunt
M Chalk W King
A Clayton J Pearce
J Cookson D Smith
D Enderby D Thomas
J Field
A Fry

6. Scheme of Delegation to Officers - Hackney Carriage and Private Hire Licensing - Amendment Relating to Delegated Powers to Refuse

(Pages 104 - 109)

Head of Environment

To consider proposals to amend the Scheme of Delegation to Officers relating to Hackney Carriage and Private Hire licensing.

(Report attached)

(No Specific Ward Relevance)

7. Scheme of Delegation to Officers - Licensing Act 2003

(Pages 110 - 115)

Head of Environment

To consider minor variations to the Scheme of Delegation to Officers relating to the Licensing Act 2003.

(Report attached)

(No Specific Ward Relevance)



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No Ward Relevance

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SCHEME OF DELEGATION TO OFFICERS – HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING - AMENDMENT RELATING TO DELEGATED POWERS TO REFUSE

(Report of the Head of Environment)

1. Summary of Proposals

In order to streamline the initial application and Committee process additional delegated authority is sought by Officers to refuse an initial application for a Hackney Carriage or Private Hire Vehicle Drivers Licence in accordance with Redditch Borough Council's "refusal protocol" which once adopted will form the basis of any refusal.

2. Recommendations

The Committee is asked to **RECOMMEND** that

the proposed addition to the Scheme of Delegation to Officers, as detailed in the report at paragraphs 5.2 and 5.3 and the "refusal protocol" attached to the report at Appendix 1 be approved and adopted by the Council with immediate effect.

3. Financial, Legal, Policy, Risk and Climate Change / Carbon Management Implications

Financial

- 3.1 There are no perceived financial implications for this proposal. However, the decision in these matters currently rests with the Licensing Sub-Committee (Taxis); reduction of applications to that Committee would have a reduction in Officers and Members time and in the cost of producing any documentation supporting that Committee.

Legal

- 3.2 A District Council has a duty under the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 to licence Hackney Carriage and Private Hire Operators, Vehicles and Drivers.
- 3.3 Local Authorities have a range of licensing powers, which can significantly affect an individual's livelihood, for example, the licensing of taxis and private hire vehicles and drivers. Refusal or

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revocation of a licence is likely to amount to the 'determination' of 'civil rights and obligations' with the result that Article 6(1) of the Human Rights Act 1998 is engaged. The Council therefore has to ensure that there is a fair and public hearing within a reasonable time.

- 3.4 The Local Government (Miscellaneous Provisions) Act 1976 provides at Section 61 (1) (b) that a District Council may suspend, revoke or refuse to renew a licence of a driver of a Hackney Carriage or Private Hire Vehicle on any of the following grounds:-
- a) That he has since the grant of the licence:-
 - (i) been convicted of an offence involving, dishonesty indecency or violence, or
 - (ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of this act, or
 - (iii) any other reasonable cause.

Policy

- 3.5 The decisions and actions of Officers would remain in accordance with the adopted policies of the Council and other bodies as appropriate.

Risk

- 3.6 Any perceived risks in changing the scheme of delegation would be reduced by implementing an appeal process. Any applicant who feels aggrieved by the decision of the Licensing Manager or Head of Service may appeal to the Licensing Sub-Committee (Taxis).

Climate Change / Carbon Management

- 3.7 None directly.

Report

4. Background

- 4.1 The prime aim of licensing of vehicles, drivers, and operators is protecting public safety.

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4.2 Historically the power to refuse applications for Hackney Carriage or Private Hire Drivers Licenses has remained a delegated function of the Licensing Sub-Committee.

5. Key Issues

5.1 The Licensing Sub-Committee expressed interest in this function being delegated down to officers in certain circumstances.

5.2 The proposed change to the scheme of delegation would be as follows:

to insert under Licensing-Taxis at page 247:

5.3 “To refuse Hackney Carriage and Private Hire Vehicle Drivers’ Licenses in line with Redditch Borough Council’s refusal protocol and subject to the right of the applicant to appeal against such refusal to the Licensing Sub-Committee (Taxis).”

5.4 The delegation should incorporate the following Officers:

HE – Head of Environment.

MEH – Manager of Environmental Health.

ML – Manager of Licensing.

5.5 The Applicant would then have a right of appeal to the Licensing Sub-Committee (Taxis) following a decision of the Licensing Manager to refuse their application.

5.6 Officers agree that there should be a basis for such a refusal and suggest the refusal protocol which can be found at Appendix 1 – this protocol should be printed and added to the Licensing Taxi Handbook at the next update.

5.7 Both these amendments constitute permanent on going delegations and therefore must be approved by the full Council before implementation.

6. Other Implications

Asset Management : None identified.

Community Safety : A consistent approach to decision making of relevant taxi legislation is required to ensure the safety of the travelling public.

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Human Resources : The proposal should ensure a reduction in Committee processes and a faster response on decision for applicant.

Social Inclusion : None identified.

Environmental/
Sustainability : None identified.

7. Lessons Learnt

An appropriate delegation of authority subject to relevant criteria can help streamline services to customers and avoid unnecessary delays.

8. Background Papers

Redditch Borough Council Scheme of Delegations.
Taxi Licensing Handbook.

9. Consultation

Relevant Redditch Borough Council staff, Countywide Licensing Officers, the Portfolio Holder for Community Safety and the Chair of the Licensing Committee have been consulted in the preparation of this report.

10. Author of Report

The author of this report is Sue Garratt (Licensing Manager), who can be contacted on extension 3032.
(email: sue.garratt@redditchbc.gov.uk) for more information.

11. Appendices

Appendix 1 - Draft refusal protocol for Hackney Carriage and Private Hire Vehicle Drivers'.

REFUSAL PROTOCOL

Hackney Carriage and Private Hire Vehicle Drivers Licence Applications.

“The Licensing Manager may refuse an initial application for a Licence if the Licensing Manager considers that it would be likely that the Licensing Sub-Committee would do so when applying the Home Office guidance as to the Relevance of Previous Convictions as expounded in pages 63 to 81 of the Council’s Taxi Handbook. The Licensing Manager shall immediately inform the applicant of the decision in writing and give the applicant a notice in writing of his/her right to appeal the decision to the Licensing Sub-Committee within 21 days of notice of refusal”.

Delegated Officers:

- HE - Head of Environment.
- MEH - Manager of Environmental Health
- MLic - Manager of Licensing.



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No Specific Ward Relevance

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LICENSING ACT 2003 – MINOR VARIATIONS DELEGATION TO OFFICERS

(Report of the Head of Environment)

1. Summary of Proposals

The Government has issued Supplementary Guidance to Local Authorities under Section 182 of the Licensing Act 2003 on a simplified process for minor variations to Premises Licences and Club Premises Certificates.

The Guidance recommends that all decisions in the administration of applications for minor variations should be delegated to Licensing Officers. This will simplify the process and enable a minor variation to be swiftly made to a premises licence or club premises certificate, within prescribed time periods.

2. Recommendations

The Committee is asked to **RECOMMEND** that

- 1) **decisions in the administration process for Minor Variations under the Licensing Act 2003 be delegated to Officers as detailed in paragraph 5.6 and as shown below:**
 - a) **Change of name and address of someone named in the Premises Licence – Section 33 of the Licensing Act 2003;**
 - b) **Application to change the Designated Premises Supervisor – Section 37 of the Licensing Act 2003;**
 - c) **Application in relation to licence for community premises that authorises the sale of alcohol to dis-apply the mandatory conditions concerning the supervision of alcohol sales by a Personal Licence Holder and the need for a Designated Premises Supervisor – Sections 25A and 41D of the Licensing Act 2003;**
 - d) **Application for Minor Variation of Premises Licence; to add a licensable activity e.g. addition of live or recorded music - Sections 41A to 41C of the Licensing Act 2003; and**
- 2) **the Statutory set fee of £89.00 be entered into the Council's list of Fees and Charges.**

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3. Financial, Legal, Policy, Risk and Climate Change / Carbon Management Implications

Financial

3.1 None identified.

Legal

3.2 Please see Policy implications.

Policy

3.3 Licensing authorities will need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of premises) which in themselves may not be significant but which cumulatively may impact adversely on the licensing objectives.

3.4 Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.

3.5 The Act covers a wide range of other licensable activities and the Licensing Authority will need to consider each application on a case by case basis and in the light of any licence conditions put forward by the Applicant.

3.6 Licensing Officers will need to bring their own experience and knowledge of licensing to bear when considering applications.

3.7 Licensing Authorities cannot impose their own conditions on the licence through the minor variations process. If the Licensing Authority considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed they should refuse it.

3.8 Any other changes to the licence require an application to vary under Section 34 of the Licensing Act 2003.

Risk

3.9 The Licensing Authority should consider if there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the plan under Section 17 of the Licensing Act 2003.

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Climate Change / Carbon Management

3.10 None identified.

Report

4. Background

4.1 The Government has issued guidance to local authorities outlining a simplified process for minor variations to premises licences and club premises certificates.

4.2 The Guidance revises and replaces the Guidance on Variations of Premises Licences published on 28th June 2007.

4.3 The Licensing Authority must consider whether an application for minor variation could impact adversely on the licensing objectives.

4.4 The Government recommends that decisions on minor variations should be delegated to licensing officers. In considering the application, it will be a matter of judgement by Officers as to whether a proposed variation is a "minor" one and there is a requirement that the Licensing Authority must consult relevant responsible authorities if there is any doubt about the impact on the variation, and to take their views into account in reaching a decision.

5. Key Issues

5.1 The Licensing Authority must consider any relevant representations received from Interested Parties within a period of 10 working days.

5.2 Within 15 working days, the Licensing Authority must determine the application to the effect either that:

- a) the minor variation is granted; or
- b) the application is refused.

5.3 If the Licensing Authority fails to respond to the applicant within fifteen working days, the application will be treated as refused and the Local Authority must return the fee to the applicant forthwith.

5.4 Minor variations will generally fall into four categories:

- a) Small adjustments to licensing hours.
- b) Removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions.
- c) Addition of certain licensable activities.
- d) Minor changes to the structure or layout of premises.

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5.5 In all cases the overall test is whether the proposed variation could adversely affect any of the four licensing activities.

5.6 The delegation should incorporate the following officers:

- a) HE - Head of Environment.
- b) MEH - Manager of Environmental Health.
- c) ML - Manager of Licensing.

6. Other Implications

Asset Management - None identified.

Community Safety - A consistent approach to decision making of the relevant licensing legislation is required.

Health - None identified.

Human Resources - existing staffing levels can accommodate the changes in the legislation and any increase in applications.

Social Exclusion - None identified.

Environmental/
Sustainability - None identified.

7. Lessons Learnt

An appropriate delegation of authority can help streamline services to customers and avoid unnecessary delays. This delegation of authority to Licensing Officers will enable a minor variation to be swiftly made to a premises licence or club premises certificate, within prescribed time periods.

8. Background Papers

The Licensing Act 2003.
Guidance issued under section 182.
Supplementary guidance issued July 2009.

9. Consultation

9.1 This report has been prepared in consultation with relevant Borough Council Officers.

9.2 Other consultees were the Countywide Licensing Officers Group.

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10. Author of Report

The author of this report is Sue Garratt (Licensing Manager) who can be contacted on extension 3032 (email: sue.garratt@redditchbc.gov.uk) for more information.

11. Appendices

None.

