

Licensing Committee

Wednesday, 5th October,
2016

at 6.00 pm

PLEASE NOTE TIME OF MEETING
Council Chamber - Civic Centre

This meeting is open to the public

Members

Councillor Mrs Blatchford (Chair)
Councillor J Baillie
Councillor Bogle
Councillor Furnell
Councillor B Harris
Councillor Jordan
Councillor Lewzey
Councillor Painton
Councillor Parnell
Councillor D Thomas

Contacts

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PUBLIC INFORMATION

Role of this Committee

The Committee publishes and implements a statement of licensing policy. It appoints Sub-Committees to deal with individual licensing applications and associated matters for which the Council as Licensing Authority is responsible.

Public Representations

At the discretion of the Chair, members of the public may address the meeting about any report on the agenda for the meeting in which they have a relevant interest.

Smoking policy – The Council operates a no-smoking policy in all civic buildings.

Mobile Telephones:- Please switch your mobile telephones to silent whilst in the meeting

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Southampton City Council's Priorities:

- Jobs for local people
- Prevention and early intervention
- Protecting vulnerable people
- Affordable housing
- Services for all
- City pride
- A sustainable Council

Fire Procedure – Should the fire alarm sound during the meeting leave the building by the nearest available exit and assemble in the Civic Centre forecourt car park.

Access – Access is available for disabled people. Please contact the Democratic Support Officer who will help to make any necessary arrangements.

Dates of Meetings: Municipal Year 2016/17:

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

TERMS OF REFERENCE

The terms of reference of the Licensing Committee are contained in Part 3 (Schedule 2) of the Council's Constitution.

BUSINESS TO BE DISCUSSED

Only those items listed on the attached agenda may be considered at this meeting.

Rules of Procedure

The meeting is governed by the Council Procedure Rules as set out in Part 4 of the Constitution.

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 4.

DISCLOSURE OF INTERESTS

Members are required to disclose, in accordance with the Members' Code of Conduct, **both** the existence **and** nature of any "Disclosable Pecuniary Interest" or "Other Interest" they may have in relation to matters for consideration on this Agenda.

DISCLOSABLE PECUNIARY INTERESTS

A Member must regard himself or herself as having a Disclosable Pecuniary Interest in any matter that they or their spouse, partner, a person they are living with as husband or wife, or a person with whom they are living as if they were a civil partner in relation to:

- (i) Any employment, office, trade, profession or vocation carried on for profit or gain.
- (ii) Sponsorship:

Any payment or provision of any other financial benefit (other than from Southampton City Council) made or provided within the relevant period in respect of any expense incurred by you in carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

- (iii) Any contract which is made between you / your spouse etc (or a body in which the you / your spouse etc has a beneficial interest) and Southampton City Council under which goods or services are to be provided or works are to be executed, and which has not been fully discharged.

- (iv) Any beneficial interest in land which is within the area of Southampton.

- (v) Any license (held alone or jointly with others) to occupy land in the area of Southampton for a month or longer.

- (vi) Any tenancy where (to your knowledge) the landlord is Southampton City Council and the tenant is a body in which you / your spouse etc has a beneficial interests.

- (vii) Any beneficial interest in securities of a body where that body (to your knowledge) has a place of business or land in the area of Southampton, and either:

- a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body, or
- b) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you / your spouse etc has a beneficial interest that exceeds one hundredth of the total issued share capital of that class.

Other Interests

A Member must regard himself or herself as having an, 'Other Interest' in any membership of, or occupation of a position of general control or management in:

Any body to which they have been appointed or nominated by Southampton City Council

Any public authority or body exercising functions of a public nature

Any body directed to charitable purposes

Any body whose principal purpose includes the influence of public opinion or policy

Principles of Decision Making

All decisions of the Council will be made in accordance with the following principles:-

- proportionality (i.e. the action must be proportionate to the desired outcome);
- due consultation and the taking of professional advice from officers;
- respect for human rights;
- a presumption in favour of openness, accountability and transparency;
- setting out what options have been considered;
- setting out reasons for the decision; and
- clarity of aims and desired outcomes.

In exercising discretion, the decision maker must:

- understand the law that regulates the decision making power and gives effect to it. The decision-maker must direct itself properly in law;
- take into account all relevant matters (those matters which the law requires the authority as a matter of legal obligation to take into account);
- leave out of account irrelevant considerations;
- act for a proper purpose, exercising its powers for the public good;
- not reach a decision which no authority acting reasonably could reach, (also known as the "rationality" or "taking leave of your senses" principle);
- comply with the rule that local government finance is to be conducted on an annual basis. Save to the extent authorised by Parliament, 'live now, pay later' and forward funding are unlawful; and
- act with procedural propriety in accordance with the rules of fairness.

AGENDA

1 APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)

To note any changes in membership of the Committee made in accordance with Council Procedure Rule 4.3.

2 ELECTION OF VICE-CHAIR

To elect the Vice Chair for the Municipal Year 2016/17.

3 DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS

In accordance with the Localism Act 2011, and the Council's Code of Conduct, Members to disclose any personal or pecuniary interests in any matter included on the agenda for this meeting.

4 STATEMENT FROM THE CHAIR

5 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING) (Pages 1 - 16)

To approve and sign as a correct record the Minutes of the meeting held on 23 March 2016 and to deal with any matters arising, attached.

6 POLICY ON THE APPLICATION OF THE FIT AND PROPER PERSON TEST FOR THE TAXI AND PRIVATE HIRE TRADES (Pages 17 - 66)

Report of Head of Transactions and Universal Services recommending adoption of a fit and proper person test policy for the taxi and private hire trades to replace the present 'Driver Conviction Guidelines', attached.

Tuesday, 27 September 2016

SERVICE DIRECTOR, TRANSACTIONS AND
UNIVERSAL SERVICES

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SOUTHAMPTON CITY COUNCIL
LICENSING COMMITTEE

MINUTES OF THE MEETING HELD ON 22 MARCH 2016

Present: Councillors Tucker (Chair), Furnell (Vice-Chair), Galton, Jordan, McEwing, Painton, Parnell and Vassiliou

Apologies: Councillor Spicer

10. **APOLOGIES AND CHANGES IN MEMBERSHIP (IF ANY)**

The Committee noted that apologies had been received from Councillor Spicer.

11. **DISCLOSURE OF PERSONAL AND PECUNIARY INTERESTS**

Members stated that the interests declared at the 16 December 2014 and 9th and 30th April 2015 remained unchanged and thus reaffirmed the following and remained in the meeting during the consideration of the matter:

Councillors Galton, Vassiliou and Painton declared personal interests, in view of Councillor Galton's respective status as being a member of Mint Casino (now Genting) and having previously visited the Genting Casino and being a member of Grosvenor Leisureworld, Councillor Vassiliou's respective status as being a member of Grosvenor Leisureworld and Genting Casino and Councillor Painton's respective status as holding membership of Genting Casino.

Councillor Furnell, Jordan, McEwing and Parnell confirmed they had not visited any casinos.

In addition Councillor Tucker declared a personal interest as having previously attended a launch of Watermark Westquay event held by Hammerson.

12. **MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING)**

RESOLVED that the minutes of the meeting held on 11th November 2015 be approved and signed as a correct record.

13. **EXCLUSION OF THE PRESS AND PUBLIC - CONFIDENTIAL PAPERS INCLUDED IN THE FOLLOWING ITEM**

RESOLVED that in accordance with the Council's Constitution, the press and public be excluded from the meeting in respect of the following item based on Categories based on categories 3, 5 and 7a of paragraph 10.4 of the Access to Information Procedure Rules. It is not in the public interest to disclose this because doing so would reveal information which is both commercially sensitive and detrimental to the business affairs of the Council.

14. **GAMBLING ACT 2015 AWARD OF LARGE CASINO LICENCE**

The Committee considered the confidential report of the Service Director, Legal and Governance, in accordance with the Local Government Act 1972 Section 100A(4),

requesting that the Licensing Committee determine which of the four applications for the Large Casino Licence provides the 'greatest benefit' to Southampton and which Applicant should be awarded the 'Provisional Statement'.

RESOLVED:

- (i) that the following decisions be approved and notified, as agreed at the meeting, to all applicants in writing after the meeting;
- (ii) the Committee has decided to grant the provisional statement to Aspers, whose quantitative score under the Evaluation Criteria and Scoring Matrix was very significantly above the second placed applicant, and whose bid the Committee qualitatively considered to be head and shoulders above the others; and
- (iii) accordingly, the applications by Global Gaming Ventures (Southampton) Limited, Grosvenor Casinos Limited and Kymeira Casinos Limited are rejected.

DECISION

Introduction

1. This is the decision of the Licensing Committee in relation to the application for a provisional statement for a large casino at Watermark West Quay.
2. The provisional decision to grant the application for a provisional statement, colloquially known as the "Stage 1 grant", was made on 4th September 2014. This decision, known as the "Stage 2 decision", is the final decision to grant a provisional statement, following a competition between the Stage 2 entrants, Aspers Universal Limited ("Aspers"), Kymeira Casino Limited ("Kymeira") which applied on the same site at the Royal Pier Waterfront Development), Grosvenor Casinos Limited ("Grosvenor") whose site is at Leisureworld, West Quay, and Global Gaming Ventures (Southampton) Limited ("GGV") which has applied at Watermark West Quay, Southampton.
3. The Committee wishes to thank all participants for the quality of their bids and their responsiveness and co-operation during what has been a long and exhaustive process.
4. Within the bounds of confidentiality, this decision sets out the reasons for the result just stated.

The legal test

5. The overriding legal test set out in Schedule 9 paragraph 5(3)(a) of the Gambling Act 2005 ("the Act") which requires the Committee *"to determine which of the competing applications would, in the authority's opinion, be likely if granted to result in the greatest benefit to the authority's area."*
6. In accordance with the Secretary of State's *Code of Practice for Determinations under Paragraphs 4 and 5 of the Schedule 9 to the Gambling Act 2005 relating to Large and Small Casinos* the Council as licensing authority published the principles they proposed to apply in making the Stage 2 determination, which were embodied in the Evaluation Criteria and Scoring Matrix.
7. As well as scoring the proposals according to the scoring mechanism set out in that document, the Committee has also asked itself which of the competing applications would be likely if granted to result in the greatest benefit to the authority's area. This produced the same conclusion. In both cases, the conclusion was unanimous.

Disregards

8. Section 210 of the Act requires the Committee to disregard whether or not a proposal is likely to be permitted in accordance with the law relating to planning or building. The Committee confirms it has disregarded this consideration.
9. Section 153 of the Act states that the authority may not have regard to the expected demand for the facilities provided under the licence. The Committee is advised that the purpose of this provision was explicitly to reverse the position under previous betting and gaming legislation, under which absence of demand was a statutory criterion or indicator for refusal. Absence of demand is no longer a criterion for refusal, any more than presence of demand is a criterion for grant. The Committee has observed this requirement.
10. Nevertheless, in evaluating the likely benefit of a casino to the area the Committee is not obliged to pretend that there would be no demand. A casino with no visits would produce no benefit, whether in terms of employment, regeneration or direct financial contributions, which are all potentially material considerations mentioned in the Code of Practice nationally and the Evaluation Criteria and Scoring Matrix, which has long since been adopted as the scoring mechanism for this competition. Indeed, each applicant has rightly made reference to such matters in their applications. Each applicant has also made projections of visitation and spend and most have made financial offers related to spend. In most cases, their own projections have been accepted by the Advisory Panel.
11. In accordance with the Terms of Reference for this Competition for this Committee, the Committee has disregarded any pre-existing contract, arrangement or other relationship between the Council and any other person, including any contract for the sale or lease of land or any section 106 agreement.
12. To be explicit, the Committee has disregarded whether Southampton City Council has any interest in the sites involved. It has also disregarded whether Southampton City Council has or may have a corporate view or preference as to the sites the subject of this competition. Amongst the obvious reasons why it has adopted this position is that the Committee would expect the Council corporately to work to bring any site the subject of a grant in this competition to fruition. Specifically, as section 7 of the Procedure Note and also paragraph 15.12 of the Council's Statement of Principles under section 349 of the Act made clear, the Council has an interest in the Royal Pier Development. However, the Committee has not allowed that to influence its thinking as to the outcome of the competition. It has considered each application on its own individual merits. This is in any event made clear by paragraph 15.28 of the Council's Statement of Principles.
13. The Committee has noted some suggestion that the result of this competition has been predetermined or biased towards particular applicants or sites. The suggestion is untrue. The Committee emphasises that it has come to this judging process with an entirely open and neutral mind. It has also appointed an independent and expert advisory Panel to ensure that there is a free-standing, objective evaluation of the merits of the respective schemes.
14. In each case, draft Schedule 9 agreements were placed before the Committee at an advanced stage of drafting. In no case had the agreements been signed. However, in every case, the substantive offer made in the Schedule 9 agreement had long since been finalised. The Committee makes it clear that, while it has taken into account the substantive offer, in no case has the specific state of drafting of the Schedule 9 agreement influenced its decision in any way.

Following the Committee's consideration of the applications and the identification of the winner, the Schedule 9 agreement with the winner has been executed prior to this decision being issued.

The Advisory Panel

15. The casino licensing competition is a unique experience for this Council, indeed for every Council granted the right by Parliament to issue large and small casino licences under the Act. Many of the issues to be considered under the Evaluation Criteria and Scoring Matrix lie well beyond the ordinary day to day work of the Licensing Committee. Accordingly, the Council appointed an expert Advisory Panel to ensure that the issues received independent, objective evaluation.
16. The Panel comprised experts in the fields of regeneration and planning, economic development, finance, problem gambling, public health, the gambling industry, the voluntary sector, public protection and community safety, leisure and legal. The Committee wishes to express its deep appreciation to the Panel for its advice and assistance.
17. The process undertaken by the Panel has included, but has not been limited, to the following:
 - July 2015: oral presentation by each application followed by questions and answers.
 - August 2015: identical request to each applicants for further information regarding any wider development going beyond the casino itself, the deliverability of the casino and the wider scheme and the mutual influence of the casino and the wider scheme.
 - October 2015: requests to applicants for further information on topic of problems gambling.
 - November 2015: invitations to provide "best and final offers".
 - January 2016: publication of first draft report for comment by applicants.
 - March 2016: publication of second draft reports for comment by applicants on scoring mechanisms.
 - March 2016: publication of final report together with a supplemental report providing further explanation about the process.
18. It appears to the Committee that this has been a thorough process, conscientiously undertaken by a body with relevant expertise.
19. The Committee has noted some criticism of the Panel's work. As to that, it has found as follows.
20. First, while it is clear that there was some error in presentation of the Panel's work in the first draft report, this error has been rectified and explained. The substantive consideration by the Panel is conspicuously clear. The Committee has not treated the Panel's reports like an examination paper but as a professional evaluation of the bids intended to assist the Committee. The Committee considers that the reports amply fulfil that requirement.
21. Second, while not every comment of every applicant on the first and second draft reports has been incorporated into the final report, the Committee has all of the correspondence and a clear picture of what is being said by each applicant. The inclusion or omission of comments by the Panel has made no difference to the consideration of the applications or the outcome of this competition.
22. Third, there has been some complaint of an absence of opportunity to comment on the final report. However, the scoring mechanism adopted by the Panel for Criterion 1 was clearly set out in the second draft report and all applicants were given an opportunity to comment upon the mechanism itself and its application

- in this case. Most took that opportunity. The published procedures have never included opportunity for a further round of comments following publication of the final report. Furthermore, the publication of the supplemental report appears chiefly to have been for the purpose of explaining the process which was followed, rather than to alter or qualify the substantive evaluations.
23. Fourth, the Committee has no doubt whatsoever that applicants have been given a full opportunity to make their case as to why they should be considered the party whose scheme is likely to result in the greatest benefit to Southampton and to receive their appropriate score upon application of the Evaluation Criteria and Scoring Matrix. Further, the Committee is fully satisfied that it has sufficient information before it now to make a decision.
 24. It is necessary to say a word about the role of the Advisory Panel.
 25. Paragraph 5.13 of the Procedure Note for this competition states: *“The function of the Advisory Panel is to evaluate the applications for the benefit of the Licensing Committee. The Advisory Panel is not a decision-making body and while the Licensing Committee will take the Panel’s evaluations into account, it is not bound to follow them.”*
 26. The Committee emphasises that the decision it has reached in this case is the Committee’s and the Committee’s alone. While it has taken the Panel’s evaluations into account, it has not considered itself bound to follow them. In order to reach its own conclusions, it has read the applications and other material placed before it, including the applicants’ own critique of the Panel’s draft reports.
 27. In the event, the Committee has agreed with the Panel’s evaluation, its approach to scoring and to the scores accorded. However, the Committee has decided to do this following its own evaluation of the merits of the applications.
- Consideration of individual criteria**
28. The Committee makes some general observations in relation to the three criteria in the Evaluation Criteria and Scoring Matrix, as follows.
 29. *Criterion 1.* The context for Criterion 1 is the legal test under Schedule 9 paragraph 5(3)(a) which requires consideration of what would be likely to result from the grant. In other words, the Committee has to consider the likely causal effects of the grant.
 30. Necessarily, when considering development schemes which have not yet broken ground, the Committee has to consider with some care whether the scheme is likely to materialise, since not all development proposals come to fruition. It must also consider the causal influence of the grant of the casino licence on the wider scheme, since if there is none then the scheme and its benefits will not result from grant of the casino licence.
 31. Of the 1000 points available to be awarded in this process, a full 750 falls under Criterion 1, which is entitled “Regenerative Impact.” This reflects the emphasis placed by the Council on the potential of the casino in terms of regeneration, including physical regeneration and tourism and employment opportunities. This emphasis is also reflected in paragraph 15.28 of the Statement of Principles, which refers to the importance placed on the ability of the proposal to deliver large scale physical regeneration and tourism potential.
 32. As important as the scope of the aspiration is its deliverability. The Committee has been careful to consider whether the scheme proffered is likely to be delivered, and has specifically considered the range of factors referred to in Criterion 1, including practicability, the applicant’s standing and track record of delivery, the contents of the legal agreement and any guarantor offered.

33. The Committee considers that the scoring mechanism adopted by the Panel to achieve a neutral and objective evaluation of the rival proposals under Criterion 1 is robust, sensible and defensible, as is the method of weighting between the casino itself and the wider schemes of which they form part. The Committee notes that no applicant has made a reasoned criticism of the mechanism and the Committee is content to adopt it.
34. *Criterion 2.* The Committee notes that this criterion requires applicants to demonstrate their proposals. A mere commitment to excellence, for example, would be likely to score lower than a detailed set of policies and procedures which demonstrate how excellence is to be attained.
35. *Criterion 3.* This has been evaluated in exactly the same way for each applicant. Applicants who can demonstrate that their proposal will come forward earlier than others' or who have offered sums from an earlier date have received full credit since their payments will be made over a longer period.

EVALUATION OF GLOBAL GAMING VENTURES (SOUTHAMPTON) LIMITED'S PROPOSALS

Criterion 1

The Committee accepts and adopts the description of GGV's proposal, as well as the scoring, in section 9 of the report. The Committee accepts that there is a very high likelihood of what would be a high quality casino being delivered. On the scoring approach adopted by the Panel and now this Committee, that element of the calculation carries one third of the marks under Criterion 1.

The larger part of the marks is awarded against the second part of the calculation, which is concerned with the wider scheme. The wider scheme is, in the Committee's view, bound to be delivered. Indeed Phase 1 of the scheme is in progress already. Phase 2 is a modest proposal, certainly relative to the other schemes in this competition. Further, even on GGV's own case, Phase 2 will be delivered with or without a casino. The only difference is some element of delay in the no-casino world.

The Committee understands that regeneration does not just mean buildings, and that there may be real benefit in a casino going on the Watermark West Quay site. But in what is a competitive exercise, those schemes which offer very large regenerative proposals, bringing into development sites which are previously unused or which amount to redevelopment of large sites, are likely to achieve preference, all other things being equal, over proposals which involve little more than the development of a casino and the benefits attendant upon such a development. Indeed, in the case of GGV the position is still weaker, for if the casino does not occupy the site it seems to be acknowledged that some other use will. Therefore, the amount of benefit likely to result from the grant of a casino licence rather than a refusal appears marginal, and certainly well short of the ambition which underpins the casino licensing process in Southampton. This was really emphasised at a very early stage in paragraph 15.28 of the Statement of Principles, which the Panel has cited.

For that reason, while GGV would have been well-placed had this been a competition which rode simply on the likelihood of delivery of a casino without more, the dearth of causative influence on the realisation of a wider regeneration scheme leaves GGV a very distant last in the evaluation of Criterion 1.

Criterion 2

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The score of 85 reflects proposals which are creditable without being outstanding or particularly innovative.

Criterion 3

The score has been objectively judged by a mathematical model which has resulted in a score of 70.

Conclusion

GGV's final score of 525 left it last in the competition by a margin of over 400 points.

While it has, in its words, an "oven ready" proposal, that is both its virtue and its downfall. It is a proposal which comes in at the tail end of a scheme which will be delivered with or without a casino. The proposal is uniquely poor in terms of its regenerative potential, which was clearly the main point of the competition under the Evaluation Criteria and Scoring Matrix. A higher financial offer may have closed the gap on the other runners, but even despite GGV's near certainty of delivery in the relatively near future, its financial offer was very significantly less than the best offer.

The Committee takes the clear, unanimous view that the GGV proposal is not likely to result in the greatest benefit to the area of Southampton and must be rejected.

EVALUATION OF GROSVENOR CASINOS LIMITED'S PROPOSALS

Criterion 1

The Committee has noted that there was discussion as to whether the location of the casino could move as between Stages 1 and 2 and agrees that it cannot. It is aware that it is dealing with a proposal under which the casino will be located in its Stage 1 position.

The Committee accepts and adopts the description of Grosvenor's proposal, as well as the scoring, in section 9 of the report. The Committee accepts that there is a very high likelihood of what would be a high quality casino being delivered. On the scoring approach adopted by the Panel and now this Committee, that element of the calculation carries one third of the marks under Criterion 1.

However, Grosvenor has fallen a little short on each of the component elements under the second part of the calculation, which considers the regeneration potential of the wider scheme, the deliverability of the wider scheme and the causative significance of the casino to the wider scheme. As to the first of these, the regeneration potential of the proposal was scored at 9, being excellent.

However, when it comes to the deliverability of the wider scheme, there are a number of hurdles confronting the proposal. Even if the Council were supportive of the proposal (which for reasons given above the Committee accepts would be the case) there would still be a question of agreeing terms with the Council as landowner, which is a matter of property and not political support and, more importantly, agreement with JLP, about

which the Committee is in no position to speculate since it lies entirely outwith Grosvenor's control. There are also a number of other leasehold interests involved as detailed in the Panel's report, as well as needing the appointment of a specialist operator for the extreme sport proposal.

In summary, the Committee agrees with the Panel that delivery of the wider scheme is contingent on a number of events which are outside the control of Grosvenor and its development partners, and there is an absence of evidence that these hurdles will all be surmounted. In the circumstances, the Committee regards the award of 5 marks for deliverability of the wider scheme, representing an assessment that it is "likely, i.e. more than 50%", as rather generous. However, on the basis that the assessment only means "marginally more than 50%" the Committee adopts it.

The Committee also understands that the casino may provide some anchoring, both financial and otherwise, for the wider scheme, the Committee does not consider that there is a demonstrably high degree of dependence of the larger scheme on the casino. It considers that the score of 6 for causative significance is correct.

Standing back from the proposal, while undoubtedly the wider scheme would be an asset to Southampton, it falls short of the scale and import of the Royal Pier scheme, perhaps lacking in some ambition and vision, and perhaps constrained by the site itself. Further, in contradistinction to the Royal Pier scheme, the Grosvenor scheme is to some extent creating replacement capacity rather than new capacity.

But more importantly, the wider scheme at this stage appears to be, at root, a paper scheme, with a very long way to go and a number of obstacles in its way, which may in time be overcome but which are not the subject of present solutions. In reaching that conclusion, the Committee has specifically considered the answers given on these points in its Grosvenor's letter of 22nd September 2015.

Further, the casino, while no doubt providing some impetus for the scheme, is not integral to the scheme in the sense that it is demonstrable that without the casino the scheme will not happen. On this point, Grosvenor stated in their letter that "in their view" the wider scheme would not happen without the casino, but provided no or insufficient justification for the assertion. Indeed, Grosvenor concede that, absent the casino, a "more conservative" scheme would be brought forward, albeit after some further delay. Such a scheme would presumably include the existing casino being remodelled or perhaps even relocated within the site, as is permitted under the Gambling Act 2005. Therefore, the outcome of a refusal would, even on Grosvenor's case, not be "no scheme" or even "no casino."

Accordingly, the Committee endorses the raw score of 292 for Grosvenor under Criterion 1, which scales up to 577 for the reasons which have been explained. As will be appreciated, this is a long way shy of the winning bid's 750 marks.

Criterion 2

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The score of 100 is a highly creditable total awarded to a highly competent and experienced operator. It appears that a few marks may have been lost through the non-submission of a procedure manual, although this is immaterial to the outcome of the competition.

Criterion 3

The score has been objectively judged by a mathematical model which has resulted in a score of 125, the maximum possible.

Conclusion

Grosvenor's score of 577 under Criterion 1, which was the third placed score, left it with far too much ground to make up on the remaining criteria. It did make up some ground on the other competitors on Criteria 2 and 3, so that its composite score of 802 placed it second overall. However, this was a very distant second indeed, being 132 points short of the winner. Even giving Grosvenor the benefit of any doubt could not have brought it within touching distance of the winning bid. In fact, the Committee has reached its conclusion without doubt. It has unanimously decided that Grosvenor's bid is not likely to result in the greatest benefit to the area.

The Committee adds by way of parenthesis that it does appear that some scheme will eventuate on this site, regardless of this decision, and hopes that Grosvenor will be a successful part of it, utilising its existing licence.

However, for the reasons it has given, the application of Grosvenor must be rejected.

EVALUATION OF KYMEIRA CASINO LIMITED'S PROPOSAL

Application for adjournment

The Committee considered the application for adjournment made by Kymeira in a letter dated 21st March 2016. The application is rejected.

There is a criticism in the letter that the final report by the Advisory Panel appears to have been redrafted in a hurry as in some respects both the wording and presentation are very poor, to the extent that in some cases sentences don't finish or make proper sense. The Committee has noted that the formatting of the report has meant that there are unnecessary line breaks in some places, and that there has been some transposition of text in certain places. However, the Committee does not consider itself or anyone else disadvantaged by that. The error seems to be one of formatting rather than thought. For example, the passage commencing "2016" on page 19 belongs following the date "11th February" further down the page, while the widowed words "level of" on page 25 belong with the orphaned words "risk associated" on page 26.

Kymeira is also concerned that new information has been provided in the final report. However, the actual scoring of Kymeira's bid under Criterion 1 was shown in the second draft report, upon which Kymeira has had the opportunity to comment, and upon which it has in fact commented. The third report contained an upwards revision of its scoring under Criterion 3. The supplemental report chiefly set out some more details as to the process. The Committee notes that the competition rules do not provide for comments on the final report, and in any case cannot see that Kymeira has been materially disadvantaged by its inability to do so. Kymeira has had the same opportunity to shape its bid and respond to questions as every other party, and the Committee is fully confident that the process has been not only full and fair but equally fair to all participants.

Kymeira has also complained at the inchoate nature of the Schedule 9 agreements. In this respect, all the applicants are in the same boat.

Evaluation of Kymeira's proposal

Criterion 1

The Committee agrees with the way the Panel has scored Kymeira's proposal under this criterion, both as to the total score and the constituent elements in the calculation.

The Committee accepts and adopts the description of Kymeira's proposal in section 9.2 of the Panel's report. It considers that the wider scheme is an ambitious and exciting one for Southampton. It is impressed, as was the Panel, with the track record of delivery of the main players in the wider scheme as set out in section 9.3. It endorses the Panel's decision to take account of the state of progression of the scheme, the level of investment which has already been made to date, the existence of the CLDA and the heads of terms. It also accepts, for the reasons given by the Panel, that the casino licence will in and of itself catalyse the wider development.

The fact that the City Council itself has an interest in the site and the likelihood of planning permission being obtained for the scheme are matters which the Committee disregards for the reasons given above.

The Committee has given close consideration to the likelihood of delivery of the wider scheme. It would be a pointless exercise, a waste of the years spent and funds expended in running the competition and a huge disservice to the people of Southampton to grant the licence for a casino which will not be built and a wider scheme which will never be delivered. It is quite obviously a huge responsibility which the Committee has taken extremely seriously.

A scheme which is merely nascent may appear attractive but lack the sense of planning and progression to enable a finding that it is "likely". A scheme which is practically built out may be certain to be completed but the casino could not claim to be the cause of the wider scheme. In this case, the Committee considers the wider scheme to be apt for the site, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. The Committee is also influenced by the judgment of the Advisory Panel itself which includes experts on the casino industry specifically and wider regeneration initiatives more generally.

A score of 6 for the deliverability of the wider scheme implies that deliverability is "more than likely, i.e. significantly more than 50%". This is more than 5 ("likely, i.e. more than 50") but less than 7 ("very likely"). The Committee considers that this is a fair evaluation of the deliverability of the wider scheme.

The Committee also specifically endorses a score of 10 for the regeneration potential of the scheme and 8 for the causative significance of the casino to the scheme.

In summary, the Committee considered this to be a very impressive scheme, and was particularly impressed with the regeneration aspects of the proposal. It was glad to see the proposal for 730 residential apartments.

Where Kymeira has performed less well is in the specific casino proposal itself. The Committee accepts the Panel's concerns regarding splitting the proposal over two floors, whatever regional precedent may be found, both on a practical and logistical level, and in relation to the trading assumptions on which the proposal is based, which appear not only significantly out of kilter with reasonable expectations for both table gaming and machine gaming (in one case too low and in one far too high), but which give the Committee concern as to the overall viability of the operation. The Committee is seriously concerned at the Panel's finding that the proposition was strategically inconsistent, significantly at variance with industry norms, and lacking a sufficiently cohesive and evidenced rationale.

Linked with this, and in the Committee's view probably the cause of it, is that Kymeira do not have an operator for the casino. That Kymeira do not have a track record of delivering large casinos is perfectly understandable – only two operators nationally do. But Kymeira as a company has no track record of delivering any casino, and cannot present any entity as the operator of their proposed casino. The track record of the operator is of course specifically mentioned in Criterion 1.

The Committee also echoes the Panel's concern that not only is there not an operator on board, but that the contractual model under which an operator would be appointed and the identity of that operator, is not specified. As the Panel also states, this appears to have affected the ability of Kymeira to demonstrate some of the policies and procedures that would normally be expected from an established operator.

The Committee have struggled to understand Kymeira's response to these criticisms, which is essentially that not having an operator is a strength and not a weakness. Even accepting that it has an experienced operational and legal team able to select an operator at the relevant time, it is inherent in the nature of the competition that the Panel and now the Committee will evaluate that which is proposed now. Where, as here, what is proposed lacks credibility in some key respects, it cannot provide an answer to say that credibility will be achieved later.

The Committee is fully in agreement with the Panel, when it states, by way of justification for the score of 4 for the regeneration potential of the casino itself, that the lack of an operator justified the low mark, since it resulted in evidential shortfalls and inaccuracies, and diminution in the Panel's confidence in the proposal.

The Committee gave serious consideration to reducing from 7 the score for deliverability of the casino itself, since the credibility gap in the proposal also affects that score. However, it decided that a sufficient overall deduction had been made under the regeneration score. However, the Committee considers that the two scores combined, 4 and 7, are at the top end of reasonable in the first part of the Criterion 1 calculation. Any variation would necessarily be downwards.

Accordingly, the Committee endorses the raw score of 310 for Kymeira under Criterion 1, which scales up to 612 for the reasons which have been explained. As will be appreciated, this is a long way shy of the winning bid which, Kymeira will appreciate, is by an operator with a genuine track record of delivery of large casinos.

Criterion 2

The Committee accepts the scoring and reasons of the Advisory Panel under this head. The Committee specifically rejects Kymeira's critique of the scoring. It regards as unrealistic Kymeira's case that it would be otiose to provide detailed policies and procedures at this stage. The Statement of Principles itself expects policies and procedures in place. The Evaluation Criteria and Scoring Matrix expressly requires demonstration of what is proposed. A simple commitment to excellence cannot possibly receive the same score as particularised proposals which are demonstrably excellent. Again, this is no doubt a function of Kymeira not actually being a casino operator. It cannot be criticised for that. However, it is not a commendation either. Its proposals must be judged on the evidence, in the same way as any other applicant. If the proposals lack specificity, they may be marked down, as they have been here, in the Committee's view correctly.

Criterion 3

The score has been objectively judged by a mathematical model which has resulted in a score of 65.

Conclusion

Kymeira's score of 612 on Criterion 1 left it with too much ground to make up on the remaining criteria. In fact, however, it came last in the competition on Criteria 2 and 3. Its composite total of 732 was over 200 points shy of the winning total. Therefore, while it came third overall it was a very distant third, and even giving Kymeira the benefit of any doubt could not have brought it within touching distance of the winning bid. In fact, the Committee has reached its conclusion without doubt. It has unanimously decided that Kymeira's bid is not likely to result in the greatest benefit to the area.

By way of parenthesis, the Committee adds that where there are two applicants both chasing the same site on the same footprint in the same wider development, it is not impossible but it is nevertheless counter-intuitive to award the licence to an entity which has not run a casino before over an entity which has experience of developing and opening the very type of casino the subject of the competition. It is noted that Kymeira has provided no guarantor and has offered no liquidated and ascertained damages in relation to the provision of jobs. In the view of the Committee, Kymeira suffers from a credibility gap relative to the eventual winner, which its bid has not managed to close. In short, there is a much greater risk in granting to an applicant which does not have any operator even identified, let alone contracted in, than to an applicant which is itself an experienced operator.

Accordingly, the application of Kymeira must be rejected.

EVALUATION OF ASPERS' PROPOSAL

Criterion 1

The Committee agrees with the way the Panel has scored Aspers' proposal under this criterion, both as to the total score and the constituent elements in the calculation.

The Committee accepts and adopts the description of the Aspers' proposal in section 9.2 of the Panel's report. It considers that the wider scheme is an ambitious and exciting one for Southampton. It also considers that the casino proposal itself is professionally presented, detailed and credible.

So far as deliverability is concerned, it is impressed at Aspers' track record of delivery of large casinos. Of course, it is the only applicant which has delivered a large casino under the Act.

It is also impressed, as was the Panel, with the track record of delivery of the main players in the wider scheme as set out in section 9.3. It endorses the Panel's decision to take account of the state of progression of the scheme, the level of investment which has already been made to date, the existence of the CLDA and the heads of terms. It also accepts, for the reasons given by the Panel, that the casino licence will in and of itself catalyse the wider development.

The fact that the City Council itself has an interest in the site and the likelihood of planning permission being obtained for the scheme are matters which the Committee disregards for the reasons given above.

The Committee has given close consideration to the likelihood of delivery of the wider scheme. It would be a pointless exercise, a waste of the years spent and funds expended in running the competition and a huge disservice to the people of Southampton to grant the licence for a casino which will not be built and a wider scheme which will never be delivered. It is quite obviously a huge responsibility which the Committee has taken extremely seriously.

A scheme which is merely nascent may appear attractive but lack the sense of planning and progression to enable a finding that it is "likely". A scheme which is practically built out may be certain to be completed but the casino could not claim to be the cause of the wider scheme. In this case, the Committee considers the casino and the wider scheme to be apt for the site, attractive, thoroughly presented and justified, backed by credible participants and supported by a sufficient record of progression to enable the Committee to make a judgment about its likelihood of fruition. The Committee is also influenced by the judgment of the Advisory Panel itself which includes experts on the casino industry specifically and wider regeneration initiatives more generally.

A score of 6 for the deliverability of the wider scheme implies that deliverability is "more than likely, i.e. significantly more than 50%". This is more than 5 ("likely, i.e. more than 50") but less than 7 ("very likely"). The Committee considers that this is a fair evaluation of the deliverability of the wider scheme. It also considers that a score of 7 for the deliverability of the casino itself is correct.

The Committee has noted the comment by one rival applicant that there is no realistic prospect of a casino ever being developed at Royal Pier, that the scheme is unbuilt and unfinanced, and the applicant has no lease or other land interest and has apparently made no financial commitment. Of course, were the scheme already built, then the casino could not take credit for its delivery. Were it fully financed and with all relevant land interests disposed of or subject to legal agreements, a greater score than 6 might have been appropriate. As it is, the Committee is confident that it has judged the questions of deliverability and causative significance of the casino to the wider scheme fairly and accurately.

In summary, the Committee considered this to be a very impressive scheme, and was particularly impressed with the regeneration aspects of the proposal. It was glad to see the proposal for up to 730 residential apartments. It strongly endorses Aspers' proposal in respect of the employment of disadvantaged people. It considered that Aspers'

engagement already with Southampton institutions demonstrates not only a real commitment to weave itself into the business, welfare and protective network in Southampton, but a commitment to deliver the scheme itself.

As a minor matter, the Committee considered that the proposed quiet room in the casino is too small for a casino of this size and commitment to achieve excellence in relation to problem gambling. It hopes to see this rectified at a later stage in the process. It has not, however, affected the scoring of the application.

As stated above, the Committee has considered each of the five scores suggested by the Panel in its scoring mechanism under Criterion 1, which result in a raw score of 380 marks. This is the leading mark amongst the four applicants, resulting in a final score under Criterion 1 of 750.

Criterion 2

The Committee accepts the scoring and reasons of the Advisory Panel under this head.

Criterion 3

The Committee accepts the scoring and reasons of the Advisory Panel under this head. It is not understood that Asperts has challenged the score in any event.

Conclusion

In conclusion, Asperts is an experienced operator with a track record of delivering large casinos. It is clear that a great deal of thought and commitment has gone into the proposal itself, as well as how it would be delivered. The Committee believes that the energy and commitment that has carried Asperts this far will continue and will help to drive forward the Royal Pier scheme as a whole. The Committee has unanimously reached the view that the Asperts proposal is likely to result in the greatest benefit to Southampton. In the opinion of the Committee it is, as stated above, head and shoulders above the other competitors.

Condition of grant

In accordance with Schedule 9 paragraph 5(3)(a) of the Act, the Committee has determined to add a condition to any licence requiring compliance with the executed Schedule 9 agreement. It directs that the provisional statement shall not be issued until the agreement has been signed and Asperts has signalled assent to such a condition.

In addition, of course, any eventual licence will be subject to the individual conditions added at Stage 1, the statutory conditions and the mandatory conditions. The default conditions were excluded in the Stage 1 decision.

Period of grant

In accordance with Schedule 9 paragraph 10(3) of the Act, the period of the provisional statement shall be three years from the date of this decision. Within that period, the Committee expects Asperts to have applied for a premises licence for the proposal. However, there is provision in Schedule 9 paragraph 10(4) for Asperts to apply for an extension of that period, which would enable it to explain the progress of the scheme.

This enables the licensing authority to retain some control over the pace and timing of delivery.

For the reasons given above, and subject to the condition specified, Asperts' application for a provisional statement is granted.

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Agenda Item 6

DECISION-MAKER:	LICENSING COMMITTEE		
SUBJECT:	POLICY ON THE APPLICATION OF THE FIT AND PROPER PERSON TEST FOR THE TAXI AND PRIVATE HIRE TRADES		
DATE OF DECISION:	5 OCTOBER 2016		
REPORT OF:	SERVICE HEAD TRANSACTIONS AND UNIVERSAL SERVICES		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Phil Bates	Tel: 023 8083 3523
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STATEMENT OF CONFIDENTIALITY	
None.	
BRIEF SUMMARY	
Report of the Licensing Manager proposing a new policy to assist in applying the fit and proper person test with regards to Licences issued under the Town Police Clauses Act 1847 and the local Government (Miscellaneous Provisions) Act 1976.	
RECOMMENDATIONS:	
	(i) That the Committee consider and approve the policy as shown in Appendix 1 to replace the present General Policy Guidelines Relating to the Relevance of Convictions.
REASONS FOR REPORT RECOMMENDATIONS	
1.	The present Guidelines are outdated and no longer fit for purpose, referring only to more serious offences and vague in their description leaving the document open to different interpretation. The suggested policy gives clear guidelines that will reassure the public and give licence holders and applicants clear boundaries. As a Policy matter the report is brought before the Licensing Committee to determine.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED	
2.	At present the guidelines are weak and do not take into consideration the recent safeguarding principles highlighted in national reports. The Institute of Licensing is working to provide National guidance on this matter, the National guidance is unlikely to be published until at least the end of the year and

	possibly much later. A review of the policy could be left until the guidance is published but delaying this report leaves the authority at risk.
DETAIL (Including consultation carried out)	
3.	Presently Southampton City Council apply the General Policy Guidelines Relating to the Relevance of Convictions, a copy is attached as Appendix 2. These guidelines mirror the most recent guidance issued by the Government prior to 2010.
4.	As a result of serious case reviews in other parts of the country safeguarding has become an important weapon in the protection of vulnerable people and it has long been recognised generally and in case law that the taxi and private hire trade are in a unique position of trust with their customers and should therefore face strict scrutiny on their suitability to be so licensed.
5.	From reviewing numerous policies across the country a first draft policy document was constructed (Appendix 3) and sent out to the taxi trade representatives on 25th January 2016 by way of email (Appendix 4) and their views sought.
6.	Unite Union responded advising they could not find fault with it. A copy of their email is at Appendix 5.
7.	The Southampton Hackney Association (SHA) responded advising they did not agree with SCC licences being suspended for periods longer than a DVLA ban and that drivers may be suspended with a conviction of driving without due care and attention. They also expressed concerns regards how SCC process such incidents. A response was sent to the SHA from the Licensing manager. The SHA response and reply from SCC Licensing manager are attached as Appendix 6.
8.	On the 29th April 2016 a 2nd draft policy as at Appendix 7 was formally put out to consultation. A letter and draft policy was sent out by e-mail to all of the private hire operators and the Southampton Hackney Association. A copy of this mail is at Appendix 8. The same mail was sent out via the Stay Connected scheme to excess of 700 individuals signed up to receive messages regards the taxi trade. The consultation was also posted on the SCC consultation and licensing web pages. On 20th May 2016 the Local Children's Safeguarding Board were asked to distribute the consultation to those they felt it appropriate to. The consultation finished on 26th June 2016.
9.	The consultation attracted 4 responses. The first was from the SHA and mirrors their original views with an addition of broadening the definition of Harassment to include defamation. Their response is attached as Appendix 9.
10.	The SHA do not agree that additional penalties should be imposed above those of the courts when a driver reaches 12 points on their licence. The courts can and do take hardship into consideration when considering the penalty they impose. The licensing authority is concerned with protecting the public and case law (Leeds v Hussain) dictates this is not a consideration when determining if someone is a fit and proper person to convey the public, it is for this reason the proposed policy recommends a minimum of a 12

	<p>month suspension. The court, when imposing a penalty, is deciding a suitable punishment for the relevant offence. The Council is deciding a different matter – whether the driver (in light of that offending and any other relevant matters) remains a “fit and proper person” as required by the legislation. The fact that a person has been punished for an offence does not, of itself, render them fit and proper (hence the exclusion of the occupation from the usual application of the Rehabilitation of Offenders Act 1974). It is stressed that each case is always to be dealt with on its own merits.</p>
11.	<p>In addition the SHA are concerned about the possible suspension in cases of careless driving and ask the circumstances are looked at before any determination. Part of the consideration will be any sentence attached to such a conviction. It is reiterated that each case will be determined on its own merits and consideration shall be given to all the relevant facts prior to any decision.</p>
12.	<p>The SHA also make comment on the system leading to determinations, the action taken against private hire drivers plying for hire, including a proposal for the Council to fine offending drivers (for which there is no legal basis), the definition of ‘committed in the course of employment as a taxi driver’ to include defamation in the definition of harassment and checks on drivers from foreign countries.</p>
13.	<p>The next response was from Mr Turkington of the Probation service suggesting a change from using the word Parole to Licence. This appears 4 times in the document and all four are in the table of offences. It makes sense to use the correct term. His response is attached at Appendix 10.</p>
14.	<p>Lyn Chitty of Love 146 who campaign to end child trafficking advised she did not see anything of concern. Her response is attached at Appendix 11.</p>
15.	<p>The final response was from Ashraf Khan and is attached as Appendix 12 but is a view regards the process rather than the policy.</p>
16.	<p>This policy has significant importance as it provides clear guidance on how the authority is to determine the fit and proper person test, this new document provides for a more consistent approach to determinations and introduces more clarity and transparency to decision making. It will enable decisions to be more robust and less susceptible to challenge..</p>
17.	<p>It is important to note that each case needs to be determined on its own merits and this is repeated throughout the document. A policy document should never remove an element of discretion on the part of the decision maker.</p>
18.	<p>The proposed policy at Appendix 1 has been amended from the version sent for consultation. The changes are highlighted and the following is the reasoning for the changes.</p> <ul style="list-style-type: none"> • In paragraph 2 ‘Each case will be decided upon its own merits’. The change is the bold, italic and underlined text, the content is the same. This has been done to highlight the importance of this principal. • In paragraph 4 ‘Unsubstantiated evidence will carry very little weight’. This was added as a result of concerns expressed by some drivers at a meeting recently.

	<ul style="list-style-type: none"> • Under “The Process – current licence holders” amendment has been made as a result of concerns expressed by drivers about the process when an officer makes a decision. It allows for an interview in certain circumstances when an officer is making the determination. • In the table of offences ‘licence’ has replaced ‘parole’ as suggested by Mr Turkington. • Under Non conviction information ‘may’ has replaced ‘will’ as this more accurately reflects the process as it will depend on the strength of the evidence whether a driver is revoked or not.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
19.	Not applicable
<u>Property/Other</u>	
20.	Not applicable
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
21.	Town Police Clauses Act 1847 Licensing of hackney carriages and hackney carriage drivers.
22.	Local Government (Miscellaneous Provisions) Act 1976 Licensing of private hire vehicles, drivers and operators and provides powers and requirements with regards hackney carriages and hackney carriage drivers.
23.	Local Government Act 2000 Local Authorities (Functions and Responsibilities) (England) Regulations 2000 Provides the framework for the discharge of various functions of a local authority.
<u>Other Legal Implications:</u>	
24.	Crime and Disorder Act 1998 Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
25.	Human Rights Act 1998 The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that

	could have an effect upon another person's Human Rights must be taken having regard to the principle of Proportionality – the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affect another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.
POLICY FRAMEWORK IMPLICATIONS	
26.	The decision to determine the application in the manner set out in this report is not contrary to the Council's policy framework

KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Proposed Policy of the Fit and Proper Person Test
2.	General Policy Guidelines Relating to the Relevance of Convictions
3.	1st Draft policy document
4.	Email to taxi trade reps with 1st draft policy
5.	Unite Union response to draft policy
6.	SHA response to draft policy and response from Licensing
7.	Draft Policy Fit and Proper Person dated 29th April 2016
8.	Formal consultation e-mail to operators and SHA
9.	SHA response to consultation
10.	Response from Mr Turkington
11.	Response from Lyn Chitty
12.	Response form Ashraf Khan
Documents In Members' Rooms	
1.	None.
2.	
Equality Impact Assessment	

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.		No
Privacy Impact Assessment		
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out.		No
Other Background Documents		
Equality Impact Assessment and Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.		
2.		



GUIDELINES RELATING TO THE APPLICATION OF THE 'FIT AND PROPER PERSON' TEST AND OTHER CONSIDERATION OF CHARACTER.

TOWN POLICE CLAUSES ACT 1847

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

This policy is intended to provide guidance and clarity on the approach that officers acting under delegated authority and the Licensing Committee or the relevant Sub-Committee shall adopt when considering the suitability and character of drivers of hackney carriage vehicles and private hire vehicles as well as proprietors and operators respectively, in accordance with the above legislation.

Each case will be decided upon its own merits. The fundamental guiding principle is the promotion of public safety. Personal circumstances shall not be taken into consideration save for rare exceptions where they might explain the offending / behaviour considered.

Whilst the term 'conviction' is used throughout this document it is important to stress that a conviction is not required for action to be taken. Where there are serious doubts about the character of a licence holder or applicant arising from a prosecution that isn't proceeded with, or even not commenced at all, the facts of the allegation / complaint may be taken into account.

Character will normally be assessed on the basis of information supplied by the Police, Disclosure and Barring Service (DBS) and DVLA checks. In addition any history of complaints or other relevant information will be considered. This may include hearsay evidence or other evidence provided by third parties. Clearly, where hearsay evidence is taken into account due weight must be attached **accordingly. Unsubstantiated evidence will carry very little weight.**

The relevance of the information and weight attached thereto will also be based on the time that has passed since the incident / offending / alleged offending occurred. A minor incident over 3 years ago is unlikely to have any relevance whereas one within the last 12 months will have significant relevance.

In a similar fashion the seriousness of the offence will also determine the relevance or weight attached. A person with a conviction of Rape, for example, is unlikely to ever be licensed except under exceptional circumstances.

Spent Convictions

Because of the risk associated with the roles being considered spent convictions and intelligence will also be taken into consideration provided these are relevant. If spent convictions are to be considered an opportunity shall be given for representations to be made about why they might be felt not to be relevant or otherwise why they should not be taken into consideration.

Cautions

Cautions are not convictions but can be taken into account when making decisions under this policy. In considering a caution the nature of the offence, when it occurred and the history of the applicant will be taken into consideration.

The process – New Applicants

New applicants with a history of convictions will receive advice from officers working in the licensing team in line with this policy. Applicants whose fitness is questioned that decide to continue with their application will have their application considered by either officers using delegated powers or the licensing sub-committee.

The process – current licence holders

The licensing team will investigate complaints / charges / allegations and the circumstances of convictions. Where either suspension or revocation is considered the matter, once all the evidence has been gathered, will be passed to the Licensing Manager, who has delegated powers, to determine the course of action. If suspension or revocation is being considered the licence holder will usually be notified and given a period of time, e.g. 7 days, to respond to the allegations, a copy of the evidence to be considered will be provided. At the end of this period there will either be a hearing before the Licensing (General) Sub-Committee or a decision will be made by an officer with appropriate delegated powers. In most cases where an officer decision is made this will be on the papers – i.e. consideration of the evidence as sent to the licence holder and any written response. An opportunity may be provided for licence holders to make oral submissions by way of interview, prior to determination of the case where there is good reason – e.g. the licence holder has communication difficulties, particularly with writing. In cases where very serious offences are alleged it may be that licences are revoked immediately in order to protect public safety. It is important to note that licences cannot be suspended pending the outcome of investigation (*See Singh v Cardiff City Council*).

In most cases the licensing manager will make the decision. The appropriate senior manager shall liaise with the Chair of the Licensing Committee and may determine that specific cases are brought before the Licensing (General) Sub-Committee.

Guidelines on Convictions

The following table provides a guide to the action Southampton City Council is likely to follow when presented with applications from applicants with the convictions shown. Cautions for the same offences will ordinarily be treated in a similar manner.

In cases where more than one conviction is listed in a history then the most recent case will normally be used, however the aggregated effect of offending shall be considered.

The table details suggested minimum action for new applicants and current licence holders. It has to be reiterated that each case will be determined on its own merits and all the relevant facts shall be considered to reach a determination. In cases where the suggested action is not taken the decision maker will be required to provide specific additional justification for this.

OFFENCES	NEW APPLICANT	CURRENT LICENCE HOLDER
<p>Murder, Manslaughter, Terrorism, Rape, Sexual offences involving children or the vulnerable, Sexual assault, Possession of indecent images of young or vulnerable, Exploitation of a prostitute, Any sexual offence committed in the course of employment as a taxi driver. Human trafficking for exploitation. Drug production/importation, Or any similar offences</p>	<p>Regardless of date of conviction the application is likely to be refused.</p>	<p>Revocation and unlikely to be granted again.</p>
<p>Aggravated Burglary, Arson, GBH, Kidnapping, Racially/religiously aggravated assault, Robbery, Riot, Violent Disorder, Affray, Threats to kill, Firearm offences other than licence breaches, Indecent assault, Indecent exposure, Soliciting (Kerb Crawling) Assisting unlawful immigration, Drug Supply, Death by dangerous driving or whilst under influence of drink or drugs, Or any similar offences.</p>	<p>Should be free of conviction for at least 7 years and at least 3 years must have passed since the completion of the sentence, including any time on licence.</p>	<p>Revocation and unlikely to be granted until at least 7 years have passed and at least 3 years must have passed since the completion of the sentence, including any time on licence.</p>

ABH, Assault police, Assault with intent to resist arrest, Common assault, Criminal Damage, Harassment (contrary to the Protection of Harassment Act), Threatening/disorderly behaviour, Possession of a weapon, Dishonesty offences, Drug Possession, Causing death by careless driving, Causing death by driving whilst uninsured Drink/Drug Driving, Or any similar offences	Should be free of conviction for at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on licence .	Revocation and unlikely to be granted until at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on licence .
Totting up disqualification or obtaining 12 points on a licence	To be free of conviction for 3 years	Licence suspension for one year or period of disqualification plus 3 months if disqualification is longer than 9 months.
Driving without due care or attention, No insurance, Obtaining 9 points on their licence	To be free of conviction for at least 2 years	Written warning
Illegally plying for hire/touting	To be free of conviction for at least 12 months	2 week suspension and prosecution including no insurance if applicable.

This table does not provide an exhaustive list but provides a guide.

Mitigating factors and how much they sway the decision.

When determining if a driver is fit and proper **the current** personal circumstances of the individual such as family, income, debt and commitments will not be taken into account.

The only **limited** way in which these issues may be considered is where it can be shown these circumstances contributed significantly to or explain the offending (*See Leeds v Hussain*).

Mitigating factors may be used to either increase or decrease the sanction. The following are examples that might be an appropriate approach. A person with a long driving history **and** no previous incidents may be treated more leniently than an individual with only a short history.

An individual that has a history of complaints is likely to receive a more severe sanction. In addition a conviction for **an offence** attracting a custodial sentence may indicate a more serious outcome is required.

Where a suggested course of action in the table above includes suspension or revocation then only in extreme circumstances will these sanctions not be used. Periods of time required to have elapsed or the length of any suspension should **generally** be swayed by no more than 25% of the suggested amount by mitigation. Only in extreme circumstances will this guide **be departed from**.

Non conviction information

Where the Licensing Authority obtains information that a licence holder or applicant may be a danger to the public their licence **may** be revoked or application halted. This may occur when a person is arrested for an offence but is bailed pending an investigation.

The Licensing Team will work closely with the source of the information, e.g. Hampshire Police, and continually review the matter. Should additional evidence arise demonstrating the risk is sufficiently reduced then arrangements will be made to issue a new licence or continue the application. However, if it is appropriate, a warning may be issued at the same time.

Appeals

The legislation provides an appeal process for any suspension, revocation or refusal. Notice of such will provide the details of how to appeal and the time limits that apply. Presently the time limit is within 21 days of notification of the decision.

There is no appeal against a warning.

Transitional arrangements

Some individuals already licenced may meet the criteria for action against their licence in the above policy. As there has already been a determination on their suitability, in the absence of new evidence to show they are not a fit and proper person, they will continue to be licensed. However, in consideration of fresh matters since the adoption of this policy it must be stressed that the previous history of any applicant, including complaints, allegations or convictions and their aggregate effect shall ordinarily be considered where relevant.

Suspension or revocation 'with immediate effect'

Ordinarily, under the terms of the legislation, a driver may continue to drive and use their licence until the expiry of the 21 day period for appeal or once a valid appeal has been lodged at the Magistrates' Court (and the appropriate fee paid) until the determination of the appeal. This is not the case however, if the decision is made with 'immediate effect'. The Road Safety Act 2006 has introduced provision for a decision to immediately suspend the use of the licence. When deciding whether to impose this additional restriction the decision-maker will have regard to the interests of public safety.

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LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS



GENERAL POLICY

1. Each case will be decided on its own merits.
2. A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.
3. The following examples afford a general guide on the action to be taken where convictions are admitted:

(a) **Minor Traffic Offences**

Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or private hire vehicle licence may be granted after its restoration but a warning should be issued as to future conduct.

(b) **Major Traffic Offences**

An isolated conviction for reckless driving or driving without due care and attention etc, should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

(c) **Drunkenness**

(i) With Motor Vehicle

A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

(ii) Not in Motor Vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

(d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

(e) Indecency Offences

As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, or any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

(f) Violence

As hackney carriage and private hire vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

(g) Dishonesty

Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

TOWN POLICE CLAUSES ACT 1847

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

GUIDELINES RELATING TO THE APPLICATION OF THE 'FIT AND PROPER PERSON' TEST AND OTHER CONSIDERATION OF CHARACTER.

This policy is intended to provide guidance and clarity on the approach that officers acting under delegated authority and the Licensing Committee or the relevant Sub-Committee shall adopt when considering the suitability and character of drivers of hackney carriage vehicles and private hire vehicles as well as proprietors and operators respectively, in accordance with the above legislation.

Each case will be decided upon its own merits. The fundamental guiding principle is the promotion of public safety. Personal circumstances shall not be taken into consideration save for rare exceptions where they might explain the offending / behaviour considered.

Whilst the term 'conviction' is used throughout this document it is important to stress that a conviction is not required for action to be taken. Where there are serious doubts about the character of a licence holder or applicant arising from a prosecution that isn't proceeded with, or even not commenced at all, the facts of the allegation / complaint may be taken into account.

Character will normally be assessed on the basis of information supplied by the Police, Disclosure and Barring Service (DBS) and DVLA checks. In addition any history of complaints or other relevant information will be considered. This may include hearsay evidence or other evidence provided by third parties. Clearly, where hearsay evidence is taken into account due weight must be attached accordingly.

The relevance of the information and weight attached thereto will also be based on the time that has passed since the incident / offending / alleged offending occurred. A minor incident over 3 years ago is unlikely to have any relevance whereas one within the last 12 months will have significant relevance.

In a similar fashion the seriousness of the offence will also determine the relevance / weight. A person with a conviction of Rape, for example, is unlikely to ever be licensed except under exceptional circumstances.

Spent Convictions

Because of the risk associated with the roles being considered spent convictions and intelligence will also be taken into consideration provided these are relevant. If spent convictions are to be considered an opportunity shall be given for representations to be made about why they might be felt not to be relevant or otherwise why they should not be taken into consideration.

Cautions

Cautions can be taken into account when making decisions under this policy. In considering a caution the nature of the offence, when it occurred and the history of the applicant will be taken into consideration.

The process – New Applicants

New applicants with a history of convictions will receive advice from officers working in the licensing team in line with this policy. Applicants whose fitness is questioned that decide to continue with their application will have their application considered by either officers using delegated powers or the licensing sub-committee.

The process – current licence holders

The licensing team will investigate complaints / charges / allegations and the circumstances of convictions. Where either suspension or revocation is considered the matter, once all the evidence has been gathered, will be passed to the Licensing Manager, who has delegated powers, to determine the course of action. If suspension or revocation is being considered the licence holder will be notified and given a period of time, usually 7 days, to respond to the allegations, a copy of the evidence to be considered will be provided. At the end of this period the decision will be made, either by the Licensing Manager or the Licensing (General) Sub-Committee. In cases where very serious offences are alleged it may be that licences are revoked immediately in order to protect public safety. It is important to note that licences cannot be suspended pending the outcome of investigation.

In most cases the licensing manager will make the decision. The Head of Legal and Democratic Services shall liaise with the Chair of the Licensing Committee and may determine that specific cases are brought before the Licensing (General) Sub-Committee.

Guidelines on Convictions

The following table provides a guide to the action SCC is likely to follow when presented with applications from drivers with the convictions shown. Cautions for the same offences will ordinarily be treated in a similar manner.

The table details suggested action for new applicants and currently licensed drivers. It has to be reiterated that each case will be determined on its own merits and all the relevant facts shall be considered to reach a determination. In cases where the suggested action is not taken the decision maker will be required to provide specific additional justification for this.

OFFENCES	NEW APPLICANT	CURRENT LICENCE HOLDER
Murder, Manslaughter, Terrorism, Rape, Sexual offences involving children or the vulnerable, Sexual assault, Possession of indecent images of young or vulnerable, Exploitation of a prostitute, Any sexual offence committed in the course	Regardless of date of conviction the application is likely to be refused.	Revocation and unlikely to be granted again.

<p>of employment as a taxi driver. Human trafficking for exploitation. Drug production/importation, Or any similar offences</p>		
<p>Aggravated Burglary, Arson, GBH, Kidnapping, Racially/religiously aggravated assault, Robbery, Riot, Violent Disorder, Affray, Threats to kill, Firearm offences other than licence breaches, Indecent assault, Indecent exposure, Soliciting (kerb crawling), Assisting unlawful immigration, Drug Supply, Death by dangerous driving or whilst under influence of drink or drugs, Or any similar offences</p>	<p>Should be free of conviction for at least 7 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>	<p>Revocation and unlikely to be granted until at least 7 years have passed and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>
<p>ABH, Assault police, Assault with intent to resist arrest, Common assault, Criminal Damage, Harassment (contrary to the Protection of Harassment Act), Threatening/disorderly behaviour, Possession of a weapon, Dishonesty offences, Drug Possession, Causing death by careless driving, Causing death by driving whilst uninsured</p>	<p>Should be free of conviction for at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole</p>	<p>Revocation and unlikely to be granted until at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>

Drink/Drug Driving, Or any similar offences		
Totting up disqualification or obtaining 12 points on a licence	To be free of conviction for 3 years	Licence suspension for one year or period of disqualification plus 3 months if disqualification is longer than 9 months.
Driving without due care or attention, No insurance, Obtaining 9 points on their licence	To be free of conviction for at least 2 years	Written warning
Illegally plying for hire/touting	To be free of conviction for at least 12 months	2 week suspension and prosecution including no insurance if applicable.

This table does not provide an exhaustive list but provides a guide

Mitigating factors and how much they sway the decision.

When determining if a driver is fit and proper the personal circumstances of the individual such as debt and commitments will not be taken into account, certainly if the decision is to revoke, however if delivering another sanction it is important the impact of losing means of an income is considered. The question to be posed is “What is a proportionate sanction for the average person” rather than How will this affect this individual? i.e. it would be unreasonable to deprive a person their income for a year for a minor matter whereas a period of 2 weeks may be proportionate. The fact the individual has debts and a mortgage is irrelevant. The circumstances of the event should also be considered.

Mitigating factors may be used to either increase or decrease the sanction. The following are examples that might be an appropriate approach. A person with a long driving history but no previous incidents may be treated more leniently than an individual with only a short history. An individual that has a history of complaints is likely to receive a more severe sanction.

Where a suggested course of action in the table above includes suspension or revocation then only in extreme circumstances will these sanctions not be used. Periods of time required to have elapsed or the length of any suspension should be swayed by no more than 25% of the suggested amount by mitigation. Only in extreme circumstances will this guide be ignored.

Non conviction information

Where the Licensing Authority obtains information that a licence holder or applicant may be a danger to the public their licence will be revoked or application halted. This normally occurs when a person is arrested for an offence but is bailed pending an investigation.

The Licensing Team will work closely with the source of the information, normally Hampshire Police and continually review the matter. Should additional evidence arise demonstrating the risk is sufficiently reduced then arrangements will be made to issue a new licence or continue the application. However, if it is appropriate, a warning may be issued at the same time.

Appeals

The legislation provides an appeal process for any suspension, revocation or refusal. Notice of such will provide the details of how to appeal and the time limits that apply. Presently the time limit is within 21 days of notification of the decision.

There is no appeal against a warning.

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Wood, Pat

From: Bates, Phil
Sent: 27 September 2016 10:59
To: Bates, Phil
Subject: Appendix 4 Email to taxi reps with 1st draft policy
Attachments: 15 06 15 Draft Taxi fit and proper policy no comments.docx

From: Bates, Phil
Sent: 25 January 2016 15:16
To: Clive Johnson, Perry MacMillan, Dave Griffiths and Ian Hall
Subject: 15 06 15 Draft Taxi fit and proper policy no comments

Good afternoon,

As you all know I have delegated powers to determine licences. I have adhered to the present policy that I have copied below. It is now time to review this policy. I have drawn up a draft policy document attached. I welcome your views on the document and dependant on your views will look to submit this for wider public consultation with a view to submitting to the Council for adoption with any amendments deemed appropriate.

So that I can move on with this piece of work I ask you respond to me with your views no later than 7th February 2016. I appreciate this is only 2 weeks but should be sufficient to provide a response on the ethos of the policy if not the detail. Any future public consultation will allow plenty of time for a more detailed response.

Thank you

Phil Bates

Licensing Manager
Legal and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council
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fax: 023 8083 4061
e-mail: phil.bates@southampton.gov.uk
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post: Licensing - Southampton City Council
PO Box 1767, Southampton. SO18 9LA

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TOWN POLICE CLAUSES ACT 1847
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GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

GENERAL POLICY

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3.	The following examples afford a general guide on the action to be taken where convictions are admitted:
(a)	Minor Traffic Offences
	Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or private hire vehicle licence may be granted after its restoration but a warning should be issued as to future conduct.
(b)	Major Traffic Offences
	An isolated conviction for reckless driving or driving without due care and attention etc, should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.
(c)	Drunkenness
	<i>(i) With Motor Vehicle</i>
	A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special examination should be arranged before the application is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.
	<i>(ii) Not in Motor Vehicle</i>
	An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.
(d)	Drugs
	An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.
(e)	Indecency Offences
	As hackney carriage and private hire vehicle drivers often carry unaccompanied passengers, applicants with convictions for indecent exposure, indecent assault, importuning, of any of the more serious sexual offences, should be refused until they can show a substantial period (at least 3 to 5 years) free of such offences. More than one conviction of this kind should preclude consideration for at least 5 years. In either case if a licence is granted a strict warning as to future conduct should be issued.

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(g) Dishonesty

Hackney carriage and private hire vehicle drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

Wood, Pat

From: Bates, Phil
Sent: 27 September 2016 11:08
To: Bates, Phil
Subject: FW: Appendix 5 Response from Unite

From: Bates, Phil
Sent: 09 February 2016 09:36
To: 'Perry McMillan'

Subject: RE: 15 06 15 Draft Taxi fit and proper policy no comments

Thanks, did mention the vests to ABP not clear what will happen though.

From: Perry McMillan
Sent: 08 February 2016 19:39
To: Bates, Phil <Phil.Bates@southampton.gov.uk>
Subject: Re: 15 06 15 Draft Taxi fit and proper policy no comments

Hi Phil
Sorry for not replying sooner
To be honest, can't find any fault in draft policy.
As Dave is now retired, could also copy Steve in ,on future emails.
Cheers
Perry
PS
Did you get to mention to ABP, about Rank Marshall vest ?

Sent from my iPad

On 8 Feb 2016, at 15:08, Bates, Phil <Phil.Bates@southampton.gov.uk> wrote:

Hi Perry,

Any response to this? The deadline was yesterday. One group concerned on totting up I am depriving licence for longer than courts.

Also is it Dave Griffiths or Steve Fricker I send the stuff to?

Phil

From: Bates, Phil
Sent: 25 January 2016 15:16
To: Clive Johnson, Perry MacMillan, Dave Griffiths, SHA
Subject: 15 06 15 Draft Taxi fit and proper policy no comments

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Thank you

Phil Bates

Licensing Manager
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TOWN POLICE CLAUSES ACT 1847	
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Wood, Pat

From: Bates, Phil
Sent: 27 September 2016 11:10
To: Bates, Phil
Subject: Appendix 6 SHA response and reply from licensing

From: Bates, Phil
Sent: 01 February 2016 14:22
To: SHA
Subject: RE: Southampton Hackney Association's Response to your Fit & Proper Policy

Hi Ian,

Thank you for responding.

Happy to discuss in more detail but I want to give a brief reply to your response.

Treating HC and PH drivers differently to the rest of the driving public. I fully understand your point but as the licence is for the carriage of public at a charge there is a reasonable expectation of a higher standard of driving from HC and PH drivers. The test is about the driver being a fit and proper person so personal hardship is not a factor. This follows the principals of case law.

Each case will be determined on the merits of the case. For some time now the police only prosecute the more serious matters of careless driving and normally only when an injury results from the accident.

I note your comments on the scheme of delegation. To reassure you I do not investigate any more when it is clear suspension or revocation may be the outcome. That is all done by the enforcement officers, it then comes to me to make a decision, part of that decision process includes the subject responding in writing and seeing me. I may well investigate minor matters that may result in a warning but that is no different to the enforcement officers. So any decision is impartial, based on the evidence. If I do revoke I provide the subject with a written explanation of my decision. Personal views do not come into it and if they did it would be good grounds to appeal.

The offences listed are for first time offenders unless stated otherwise, it would normally be appropriate to escalate any sanction for repeat offenders, again each case on its merits.

Your suggestion to 'fine' the operator has no basis in law. I certainly do not have the power to do this. Each time a Private Hire Driver takes an illegal trip we look at the actions of the operator and ensure they are taking reasonable steps to prevent such actions by the drivers. Our action will always be proportionate to the degree of guilt shown by the evidence of the offender. The sanctions I have are advice, warning, suspension and revocation. Often the better way forward is to work with the operator to introduce work practices that reduce the incidents of breaches.

No doubt we will discuss this in more detail when we meet.

Phil Bates

Licensing Manager
Legal and Democratic Services
Southampton and Eastleigh Licensing Partnership
Southampton City Council

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From: SHA
Sent: 01 February 2016 13:25
To: Bates, Phil
Cc: Ivory, Richard ; Letts, Simon (Cllr)
Subject: Southampton Hackney Association's Response to your Fit & Proper Policy

Phil,

Penalty Points

We are concerned as an organisation representing our members that the Council is looking to put in penalties for taxi drivers that are above those currently imposed by the law.

The current rules allow for a person to obtain up to 12 penalty points without losing their driving licence.

Indeed it is possible that in cases of exceptional hardship, more than 12 penalty points maybe applicable to an individual driving licence . It appears draconian that the Council have powers greater than that imposed by English Law in the event of the driver picking up penalty points. The disqualification for a further period should be removed to align with the current driving licence legislation. It seems entirely inappropriate that a driver who is allowed to drive has his licence suspended for a further period by the Local Authority, when legally there is no difficulty, insurance or otherwise, with them being back on the road.

Furthermore, an automatic disqualification for 12 penalty points does not allow a discretion for exceptional hardship, and this should be built into a review.

We are also concerned as a body concerning the possible suspension for 'careless driving' offences, again it appears entirely appropriate that in the case of minor accidents which can give rise to a charge of driving without due care and attention, the circumstances of the offences are looked into and examined before any form of decision with regard to potential suspension of the licence is reached. We as a body

consider that there must be the possibility for a hearing in front of the licensing officer to put forward special reasons as to why penalties seemingly upon the list should not be imposed on the individual driver as a fall back, we also do not see that any greater sanction should apply to a taxi driver that currently applies to their licence under English Law.

Turning to the question of the amendments to the regime, we and our members were concerned to find out on the 15th December 2015, the scheme of delegation, had changed to allow one licensing officer to be judge, jury and executioner in the event of a complaint levied to the Local Authority.

The fact that one person is responsible for gathering evidence, and determining an outcome is in a view against the principles of natural justice long enshrined under English Law, at the very least, we would suggest that if the matter is duly delegated, then the person gathering evidence or even collating the same cannot be the person who reaches a decision as to the outcome of any particular complaint.

We as a body would rather return to the system where there was a right to a hearing in front of the panel, and at the very least, we would hope that there would be an independent person

to sit and pass judgement. We are aware of occasions in the past where personal views have come into play, causing individuals to be repeatedly taken in front of panels, even though they have been exonerated. We would confirm that this has not applied to the current licensing regime, but whilst we have faith in things as they stand at the current time, this may not be the case in the future if those powers are granted.

We also note that it is intended to suspend a private hire driver for applying for hire or touting by a suspension for two weeks. We believe that this is appropriate for a first occasion, but should not apply to repeat offenders.

We consider that a repeat offender should get an incremental doubling of the ban on each occasion, should they be caught on three or more occasions then we consider that the operator of the private hire driver should also receive some form of penalty, be it financial or otherwise. On the occasion that a private hire driver has taken either a specific booking from a Hackney Carriage licence, or indeed generally, then the monies received by that private hire driver, should either be returned to the individual Hackney Carriage driver, or made payable into a general fund to be dealt with at a specific date in the future by way of a fine.

This we believe will act as an additional method to encourage those operators employing such drivers to properly regulate them and also ensure that where no profit whatsoever is made by the private hire individual, then that could be a remedy toward stopping future breaches.

Regards,

Ian Hall

CHAIRMAN

Southampton Hackney Association (SHA)

Southampton Hackney Taxi drivers in our City

www.southamptonhackneyassociation.co.uk



GUIDELINES RELATING TO THE APPLICATION OF THE 'FIT AND PROPER PERSON' TEST AND OTHER CONSIDERATION OF CHARACTER.

TOWN POLICE CLAUSES ACT 1847

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

This policy is intended to provide guidance and clarity on the approach that officers acting under delegated authority and the Licensing Committee or the relevant Sub-Committee shall adopt when considering the suitability and character of drivers of hackney carriage vehicles and private hire vehicles as well as proprietors and operators respectively, in accordance with the above legislation.

Each case will be decided upon its own merits. The fundamental guiding principle is the promotion of public safety. Personal circumstances shall not be taken into consideration save for rare exceptions where they might explain the offending / behaviour considered.

Whilst the term 'conviction' is used throughout this document it is important to stress that a conviction is not required for action to be taken. Where there are serious doubts about the character of a licence holder or applicant arising from a prosecution that isn't proceeded with, or even not commenced at all, the facts of the allegation / complaint may be taken into account.

Character will normally be assessed on the basis of information supplied by the Police, Disclosure and Barring Service (DBS) and DVLA checks. In addition any history of complaints or other relevant information will be considered. This may include hearsay evidence or other evidence provided by third parties. Clearly, where hearsay evidence is taken into account due weight must be attached accordingly.

The relevance of the information and weight attached thereto will also be based on the time that has passed since the incident / offending / alleged offending occurred. A minor incident over 3 years ago is unlikely to have any relevance whereas one within the last 12 months will have significant relevance.

In a similar fashion the seriousness of the offence will also determine the relevance or weight attached. A person with a conviction of Rape, for example, is unlikely to ever be licensed except under exceptional circumstances.

Spent Convictions

Because of the risk associated with the roles being considered spent convictions and intelligence will also be taken into consideration provided these are relevant. If spent convictions are to be considered an opportunity shall be given for representations to be made about why they might be felt not to be relevant or otherwise why they should not be taken into consideration.

Cautions

Cautions are not convictions but can be taken into account when making decisions under this policy. In considering a caution the nature of the offence, when it occurred and the history of the applicant will be taken into consideration.

The process – New Applicants

New applicants with a history of convictions will receive advice from officers working in the licensing team in line with this policy. Applicants whose fitness is questioned that decide to continue with their application will have their application considered by either officers using delegated powers or the licensing sub-committee.

The process – current licence holders

The licensing team will investigate complaints / charges / allegations and the circumstances of convictions. Where either suspension or revocation is considered the matter, once all the evidence has been gathered, will be passed to the Licensing Manager, who has delegated powers, to determine the course of action. If suspension or revocation is being considered the licence holder will usually be notified and given a period of time, e.g. 7 days, to respond to the allegations, a copy of the evidence to be considered will be provided. At the end of this period there will either be a hearing before the Licensing (General) Sub-Committee or with an officer with appropriate delegated powers, after which the determination will be made. In cases where very serious offences are alleged it may be that licences are revoked immediately in order to protect public safety. It is important to note that licences cannot be suspended pending the outcome of investigation. (*See Singh v Cardiff City Council*)

In most cases the licensing manager will make the decision. The appropriate senior manager shall liaise with the Chair of the Licensing Committee and may determine that specific cases are brought before the Licensing (General) Sub-Committee.

Guidelines on Convictions

The following table provides a guide to the action Southampton City Council is likely to follow when presented with applications from applicants with the convictions shown. Cautions for the same offences will ordinarily be treated in a similar manner.

In cases where more than one conviction is listed in a history then the most recent case will normally be used, however the aggregated effect of offending shall be considered.

The table details suggested minimum action for new applicants and current licence holders. It has to be re-iterated that each case will be determined on its own merits and all the relevant facts shall be considered to reach a determination. In cases where the suggested action is not taken the decision maker will be required to provide specific additional justification for this.

OFFENCES	NEW APPLICANT	CURRENT LICENCE HOLDER
<p>Murder, Manslaughter, Terrorism, Rape, Sexual offences involving children or the vulnerable, Sexual assault, Possession of indecent images of young or vulnerable, Exploitation of a prostitute, Any sexual offence committed in the course of employment as a taxi driver. Human trafficking for exploitation. Drug production/importation, Or any similar offences</p>	<p>Regardless of date of conviction the application is likely to be refused.</p>	<p>Revocation and unlikely to be granted again.</p>
<p>Aggravated Burglary, Arson, GBH, Kidnapping, Racially/religiously aggravated assault, Robbery, Riot, Violent Disorder, Affray, Threats to kill, Firearm offences other than licence breaches, Indecent assault, Indecent exposure, Soliciting (Kerb Crawling) Assisting unlawful immigration, Drug Supply, Death by dangerous driving or whilst under influence of drink or drugs, Or any similar offences.</p>	<p>Should be free of conviction for at least 7 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>	<p>Revocation and unlikely to be granted until at least 7 years have passed and at least 3 years must have passed since the completion of the sentence, including any time on parole.</p>

ABH, Assault police, Assault with intent to resist arrest, Common assault, Criminal Damage, Harassment (contrary to the Protection of Harassment Act), Threatening/disorderly behaviour, Possession of a weapon, Dishonesty offences, Drug Possession, Causing death by careless driving, Causing death by driving whilst uninsured Drink/Drug Driving, Or any similar offences	Should be free of conviction for at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole	Revocation and unlikely to be granted until at least 3 years and at least 3 years must have passed since the completion of the sentence, including any time on parole.
Totting up disqualification or obtaining 12 points on a licence	To be free of conviction for 3 years	Licence suspension for one year or period of disqualification plus 3 months if disqualification is longer than 9 months.
Driving without due care or attention, No insurance, Obtaining 9 points on their licence	To be free of conviction for at least 2 years	Written warning
Illegally plying for hire/touting	To be free of conviction for at least 12 months	2 week suspension and prosecution including no insurance if applicable.

This table does not provide an exhaustive list but provides a guide

Mitigating factors and how much they sway the decision.

When determining if a driver is fit and proper the personal circumstances of the individual such as family, income, debt and commitments will not be taken into account.

The only way in which these issues may be considered is where it can be shown these circumstances contributed significantly to or explain the offending (*See Leeds v Hussain*).

Mitigating factors may be used to either increase or decrease the sanction. The following are examples that might be an appropriate approach. A person with a long driving history but no previous incidents may be treated more leniently than an individual with only a short history.

An individual that has a history of complaints is likely to receive a more severe sanction. In addition a conviction for ABH attracting a custodial sentence may indicate a more serious outcome is required.

Where a suggested course of action in the table above includes suspension or revocation then only in extreme circumstances will these sanctions not be used. Periods of time required to have elapsed or the length of any suspension should be swayed by no more than 25% of the suggested amount by mitigation. Only in extreme circumstances will this guide be ignored.

Non conviction information

Where the Licensing Authority obtains information that a licence holder or applicant may be a danger to the public their licence will be revoked or application halted. This may occur when a person is arrested for an offence but is bailed pending an investigation.

The Licensing Team will work closely with the source of the information, e.g. Hampshire Police and continually review the matter. Should additional evidence arise demonstrating the risk is sufficiently reduced then arrangements will be made to issue a new licence or continue the application. However, if it is appropriate, a warning may be issued at the same time.

Appeals

The legislation provides an appeal process for any suspension, revocation or refusal. Notice of such will provide the details of how to appeal and the time limits that apply. Presently the time limit is within 21 days of notification of the decision.

There is no appeal against a warning.

Transitional arrangements

Some individuals already licenced may meet the criteria for action against their licence in the above policy. As there has already been a determination on their suitability, in the absence of new evidence to show they are not a fit and proper person, they will continue to be licensed. However, in consideration of fresh matters since the adoption of this policy it must be stressed that the previous history of any applicant, including complaints, allegations or convictions and their aggregate effect shall ordinarily be considered where relevant.

Suspension or revocation 'with immediate effect'

Ordinarily, under the terms of the legislation, a driver may continue to drive and use their licence until the expiry of the 21 day period for appeal or once a valid appeal has been lodged at the Magistrates' Court (and the appropriate fee paid) until the determination of the appeal. This is not the case however, if the decision is made with 'immediate effect'. The Road Safety Act 2006 has introduced provision for a decision to immediately suspend the use of the licence. When deciding whether to impose this additional restriction the decision-maker will have regard to the interests of public safety.

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Bates, Phil

From: Bates, Phil
Sent: 29 April 2016 10:36
Subject: Fit and Proper Person policy consultation
Attachments: 201604 Consultation letter.pdf; 201604 Draft Taxi fit and proper policy.pdf

Good morning,

Please find enclosed a letter explaining the consultation process for a change of policy with regards how convictions and the fit and proper person test is applied. I have previously consulted with a smaller section of the trade on this subject and have tweaked the policy as a result. So if you were part of the original consultation please read through and resubmit your views or amended views as appropriate.

Please note this is only a proposal at present. At the end of the consultation I will review the comments and consider submitting a report to the Licensing Committee later in the year to ask them to approve the policy.

I am also looking at the Policy and Conditions for both the Hackney and Private Hire trades. I will go through the same process but this will take some time to complete, probably next year. I will keep you informed as this progresses and may seek advice from some of you.

I have addressed this to all the private hire operators and taxi trade reps. Another mail will also go out to those signed up to the SCC Stay Connected service and it is on the Taxi notice board. However this may still not reach all involved in the trade, can you please pass this onto your drivers and any other parties you feel may have an interest.

Thank you

Phil Bates

Licensing Manager
Licensing Team
Southampton and Eastleigh Licensing Partnership
Southampton City Council
'phone: 023 8083 3002
fax: 023 8083 4061
e-mail: licensing@southampton.gov.uk
web: www.southampton.gov.uk/licensing_and_licensing.eastleigh.gov.uk
post: Licensing - Southampton City Council
PO Box 1767, Southampton. SO18 9LA

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9th May 2016

Southampton Hackney's Association's Response to the Fit and Proper Person Policy

Penalty Points

We are concerned as an organisation representing our members that the Council is looking to put in penalties for taxi drivers that are above those currently imposed by the law. The current rules allow for a person to obtain up to 12 penalty points without losing their driving licence.

Indeed it is possible that in cases of exceptional hardship, more than 12 penalty points maybe applicable to an individual driving licence. It appears draconian that the Council have powers greater than that imposed by English Law in the event of the driver picking up penalty points. The disqualification for a further period should be removed to align with the current driving licence legislation. It seems entirely inappropriate that a driver who is allowed to drive has his licence suspended for a further period by the Local Authority, when legally there is no difficulty, insurance or otherwise, with them being back on the road.

Furthermore, an automatic disqualification for 12 penalty points does not allow a discretion for exceptional hardship, and this should be built into a review.

We are also concerned as a body concerning the possible suspension for 'careless driving' offences, again it appears entirely appropriate that in the case of minor accidents which can give rise to a charge of driving without due care and attention, the circumstances of the offences are looked into and examined before any form of decision with regard to potential suspension of the licence is reached. We as a body consider that there must be the possibility for a hearing in front of the licensing officer to put forward special reasons as to why penalties seemingly upon the list should not be imposed on the individual driver as a fall back, we also do not see that any greater sanction should apply to a taxi driver that currently applies to their licence under English Law.

Turning to the question of the amendments to the regime, we and our members were concerned to find out on the 15th December 2015, the scheme of delegation, had changed to allow one licensing officer to be judge, jury and executioner in the event of a complaint levied to the Local Authority.

The fact that one person is responsible for gathering evidence, and determining an outcome is in a view against the principles of natural justice long enshrined under English Law, at the very least, we would suggest that if the matter is duly delegated, then the person gathering evidence or even collating the same cannot be the person who reaches a decision as to the outcome of any particular complaint.

We as a body would rather return to the system where there was a right to a hearing in front of the panel, and at the very least, we would hope that there would be an independent person to sit and pass judgement. We are aware of occasions in the past where personal views have come into play, causing individuals to be repeatedly taken in front of panels, even though they have been exonerated. We would confirm that this has not applied to the current licensing regime, but whilst we have faith in things as they stand at the current time, this may not be the case in the future if those powers are granted.

We also note that it is intended to suspend a private hire driver for applying for hire or touting by a suspension for two weeks. We believe that this is appropriate for a first occasion, but should not apply to repeat offenders.

We consider that a repeat offender should get an incremental doubling of the ban on each occasion, should they be caught on three or more occasions then we consider that the operator of the private hire driver should also receive some form of penalty, be it financial or otherwise. On the occasion that a private hire driver has taken either a specific booking from a Hackney Carriage licence, or indeed generally, then the monies received by that private hire driver, should either be returned to the individual Hackney Carriage driver, or made payable into a general fund to be dealt with at a specific date in the future by way of a fine.

This we believe will act as an additional method to encourage those operators employing such drivers to properly regulate them and also ensure that where no profit whatsoever is made by the private hire individual, then that could be a remedy toward stopping future breaches.

Added Extra Items

Under the title of Offences, the words, 'committed in the course of employment as a taxi driver', surely the word employment describes the state of being employed or having a job, we are not employed by Southampton City Council (SCC) We are self-employed, working for oneself as a freelancer or the owner of s business, rather than an employee, who is a person employed by another in return for wages.

If we are supposed to be employed by SCC, the Health and Safety Executive state that you as our employers should provide us with access to toilets and other welfare facilities. Exactly the same as if Wimpy that has a building site, has self employed personnel working on the site, Wimpy has to provide these facilities.

Also under Offences, you have mentioned the word 'harassment'. Harassment is to worry or to annoy continually. I would like to broaden this and use the word 'defamation', which could be written or posted through social media. This should come under the Fit and Proper Persons Test.

Finally, the background checks on drivers from other Countries needs to be significantly tightened up. EU Rules are somewhat lax, certainly when it comes to convicted foreign rapists. With open borders, and the fact that some European Countries allow convictions for rape/sexual assault to be expunged after just three years, this would mean that SCC would have to be more vigilant. I have mentioned this when we used to attend consultation talks but to no avail.

Ian Hall

Ian Hall Chairman of Southampton Hackney Association (SHA) for and on behalf of our committee.

9/5/2016.

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Wood, Pat

From: Bates, Phil
Sent: 27 September 2016 11:13
To: Bates, Phil
Subject: Appendix 10 Response from Mr Turkington

From: Robbie.Turkington
Sent: 31 May 2016 10:00
To: Bates, Phil <Phil.Bates@southampton.gov.uk>
Subject: Fit and Proper consultation.

Hi Phil- I don't normally contribute here but I had a chance to look at your document sent out via the LSCB for consultation.

Could I suggest you change the reference to Parole to "Licence" as this is more accurate in terms of how individuals are managed post custody. To avoid confusion it could be referred to as "post custody licence" or even "any period subject to post custody supervision".

I also wondered if you wanted to give consideration to the duration of Sex Offender Registration? This can often go beyond the end of any sentence for a serious sexual offence. Additionally, there are new offences linked to Stalking which might be relevant.

Thanks

Robbie Turkington,
Senior Probation Officer
Southampton, Portsmouth and IOW LDU
South West South Central Division
National Probation Service
National Offender Management Service

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Wood, Pat

From: Bates, Phil
Sent: 27 September 2016 11:15
To: Bates, Phil
Subject: appendix 11 Response from Lyn Chitty

From: Lynne Chitty
Sent: 01 June 2016 10:04
To: Bates, Phil <Phil.Bates@southampton.gov.uk>
Subject: Draft Taxi fit and proper policy

Dear Phil I have read through both documents and have not seen anything I wish to draw your attention to. Should you feel the Taxi companies need training in child trafficking which is different from CSE training please feel free to contact me as Love146 delivers training. If you want more information on the training please contact me

Kind regards

Lynne

Lynne Chitty
UK Care Director



The end of child trafficking and exploitation. Nothing less.
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Agenda Item 6

Appendix 12

I would like to say that the discretionary power given to the licensing authority is an undemocratic and dictatory one, I would compare such decision making process to extremism that one person makes decision on the basis of probability this probability is one hundred percent wrong when it goes against the court decision, in my case my license was revoked on the basis of probability and that decision is still outstanding even though the HM court found me not guilty, this is an insult to the court and it is no different from the 'contempt of court', the three judges who made the decision, they are ignorant in the eyes of licensing manager, there is also the danger of one could be practising his raciest ideas by using such discretionary powers and hiding behind the Vail of probability of fit and proper person, the person who makes such decision is not aware of the damage and infliction its bringing on the families who are subjected to such treatment, had I had financial capability I would have sued the city council **and above all to prove that those who make decisions on the basis of probability not reality are wasting valuable resources of the general public.** I strongly believe that such power is a solid ground for racism that makes racism legitimate in the heart of the government, this power of discretion seems to me a state within a state,

I am the victim of the misuse of such a discretionary power, in my opinion this power must be removed as soon as possible to make the licensing authority democratic unbiased and that is fit for the modern time.

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