

Licensing (General) Sub-Committee

Monday, 23rd December, 2019
at 9.30 am

PLEASE NOTE TIME OF MEETING

Conference Room 3 - Civic Centre

This meeting is open to the public

Members

Councillor McEwing
Councillor Renyard
Councillor G Galton
Councillor Kataria
Councillor Streets

Contacts

Democratic Support Officer

Pat Wood

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Service Director - Transactions and Universal
Services

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PUBLIC INFORMATION

Terms of Reference

The Sub-Committee deals with licences, permits and forms of consent (other than those for which the Council is responsible under the Licensing Act 2003), including

- Hackney carriage and private hire drivers, vehicles and operators
- Street trading
- Sex establishments

Relevant Representations

Those who have made relevant representations may address the meeting about the matter in which they have an interest with the consent of the Chair.

The Southampton City Council Strategy (2016-2020) is a key document and sets out the four key outcomes that make up our vision.

- Southampton has strong and sustainable economic growth
- Children and young people get a good start in life
- People in Southampton live safe, healthy, independent lives
- Southampton is an attractive modern City, where people are proud to live and work

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.

Use of Social Media:- The Council supports the video or audio recording of meetings open to the public, for either live or subsequent broadcast. However, if, in the Chair's opinion, a person filming or recording a meeting or taking photographs is interrupting proceedings or causing a disturbance, under the Council's Standing Orders the person can be ordered to stop their activity, or to leave the meeting.

By entering the meeting room you are consenting to being recorded and to the use of those images and recordings for broadcasting and or/training purposes. The meeting may be recorded by the press or members of the public.

Any person or organisation filming, recording or broadcasting any meeting of the Council is responsible for any claims or other liability resulting from them doing so.

Details of the Council's Guidance on the recording of meetings is available on the Council's website.

Fire Procedure – in the event of a fire or other emergency a continuous alarm will sound and you will be advised by Council officers what action to take.

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 2019/20

Meetings of the Committee are held as and when required.

CONDUCT OF MEETING

Rules of Procedure

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

Business to be discussed

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

Quorum

The minimum number of appointed Members required to be in attendance to hold the meeting is 3.

CONDUCT OF MEETING

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 the membership of the Sub-Committee made in accordance with Council Procedure Rule 4.3.

2 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.

3 STATEMENT FROM THE CHAIR

4 MINUTES OF THE PREVIOUS MEETING (INCLUDING MATTERS ARISING) (Pages 1 - 4)

To approve and sign as a correct record the Minutes of the meeting held on 20 September 2019 and to deal with any matters arising.

5 EXCLUSION OF THE PRESS AND PUBLIC

Chair to move that in accordance with the Council's Constitution, specifically the Access to Information Procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of item 7 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules. The information contained therein is potentially exempt as it relates to individual personal details and information held under data protection legislation. Having applied the public interest test it is not appropriate to disclose this information as the individuals' legal expectation of privacy outweighs the public interest in the exempt information.

6 EXCLUSION OF THE PRESS AND PUBLIC - LEGAL ADVICE

At a predetermined point during the consideration of all items the Sub-Committee may move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and the public, unless otherwise excluded by the Licensing Act 2003 (Hearings) Regulations 2005, will be invited to return immediately following that private session at which time the matter will be determined and the decision of the Sub-Committee will be announced.

7 HACKNEY CARRIAGE DRIVER LICENCE REVIEW (Pages 5 - 62)

Report of the Service Director – Transactions and Universal Services to consider whether an applicant for renewal is a fit and proper person to be issued a Hackney Carriage Driver's Licence.

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SOUTHAMPTON CITY COUNCIL
LICENSING (GENERAL) SUB-COMMITTEE
MINUTES OF THE MEETING HELD ON 20 SEPTEMBER 2019

Present: Councillors McEwing, Renyard and Streets

Apologies: Councillors Mrs Blatchford and B Harris

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

The apologies of Councillors Mrs Blatchford and B Harris were noted. In the absence of the Chair, the meeting was chaired by the Vice Chair, Councillor McEwing.

It was noted that the Head of Legal and Democratic Services, acting under delegated powers, had appointed Councillor Streets to the Conservative vacancy on the Licensing (General) Sub-Committee for the purposes of this meeting.

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

RESOLVED that the minutes of the meeting held on 28 August be approved and signed as a correct record.

22. **EXCLUSION OF THE PRESS AND PUBLIC**

The Chair moved that in accordance with the Council's Constitution, specifically the Access to Information Procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of item 7 based on Categories 1 and 2 of paragraph 10.4 of the Access to Information Procedure Rules. The information contained therein was potentially exempt as it related to individual personal details and information held under data protection legislation.

RESOLVED that having applied the public interest test it was not appropriate to disclose this information as the individuals' legal expectation of privacy outweighed the public interest in the exempt information.

23. **EXCLUSION OF THE PRESS AND PUBLIC - LEGAL ADVICE**

RESOLVED that the Sub-Committee move into private session in order to receive legal advice when determining issues. The parties to the hearing, press and the public, unless otherwise excluded by Category 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules, would be invited to return immediately following that private session at which time the matter would be determined and the decision of the Sub-Committee announced.

24. **PRIVATE HIRE DRIVERS LICENCE REVIEW**

The Sub-Committee considered the report of the Service Director - Transactions and Universal Services to consider whether a specific individual is a fit and proper person to hold a Private Hire Driver's Licence.

The Licensing Manager, the Private Hire Driver and their legal representative were present and with the consent of the Chair, addressed the meeting.

At the commencement of the hearing the representative of the driver applied for the hearing to be adjourned.

The Sub-Committee considered the decision in private session in order to receive legal advice when determining issues.

RESOLVED that the application to adjourn should be refused and the matter should proceed

The Sub-Committee considered all the evidence presented by the Licensing Manager, the Private Hire Driver and the legal representative.

The Sub-Committee considered the decision in private session in order to receive legal advice when determining issues.

RESOLVED that the driver is not a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976 “the Act” and to revoke the Private Hire Driver’s Licence. Further, that it was in the interests of public safety that this should be with immediate effect in accordance with sub section (2B) of section 61 of the Act.

After private deliberation the Sub-Committee reconvened and the Chair read the following decision with reasons:-

At the commencement of the hearing the representative of the driver applied for the hearing to be adjourned. The Sub-Committee heard representations from the drivers’ representative.

The Sub-Committee considered the application and received legal advice that there were no specific rules regarding adjournments, and subject to acting fairly and reasonably the decision was a matter for them.

The Sub-Committee noted that the driver appeared to have been let down at the last minute by his previous representative but also considered the concerns about his driving including two failures of a Blue Trust driving assessment.

The Sub-Committee received further legal advice that their primary concern in dealing with driver’s licence is the protection of the public and that if the matter proceeded and a decision was made to revoke, the driver could appeal to the magistrates’ court by way of a full re-hearing.

In balancing all of the above matters the Sub-Committee concluded that the application to adjourn should be refused and the matter should proceed.

The Sub-Committee has considered very carefully the report of the Service Director – Transactions and Universal Services and all the evidence presented today by the Licensing Manager, the driver and his representative.

It has given due regard to the Local Government (Miscellaneous Provisions) Act 1976 “the Act” and the guidelines relating to the application of the “fit and proper person” test and other considerations of character. The Human Rights Act has been borne in mind whilst making the decision.

The Sub-Committee considered all the facts and has decided that the driver is not a fit and proper person in accordance with the Act and to revoke the Private Hire Driver’s Licence. Further, that it is in the interests of public safety that this should be with immediate effect in accordance with sub section (2B) of section 61 of the Act.

Reasons for Decision

The Sub-Committee heard significant evidence relating to a number of complaints concerning the driver’s honesty, behaviour and driving. It was agreed that it was important to consider the totality of the evidence in this case including the complaint history.

In addition to issues relating to dishonesty and poor behaviour, the Sub-Committee has heard very concerning evidence relating to the safety of the drivers driving and failure to pass a Blue Lamp Trust Taxi driving assessment by the deadline issued in a written warning in July 2019. The driver is still yet to pass the assessment.

The policy document (guidelines) clearly indicates that each case will be decided on its own merits and that public safety must be at the forefront of our minds when considering applications. Personal circumstances cannot be taken into account. The Sub-Committee took into account the representations made by the driver but did not feel able to accept all of the explanations given for some of the complaints made.

The Sub-Committee noted the medical evidence provided by the driver and concluded that this only went to a minority of issues raised and in any event is currently inconclusive.

In light of all of the above the Sub-Committee has no confidence in the driver in dealing with passengers and with Licensing Officers, or driving in a safe and suitable manner.

Accordingly the determination is to revoke the driver’s licence and the revocation must have immediate effect in order to promote and protect public safety.

There is a right of appeal for an aggrieved driver to the Magistrates’ Court. Formal notification of the decision will set out that right in full.

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