

Regulatory Committee

Date: **Tuesday, 26th February, 2008**

Time: **2.00 p.m.**

Place: **The Council Chamber, Brockington, 35
Hafod Road, Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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**County of Herefordshire
District Council**

AGENDA

for the Meeting of the Regulatory Committee

To: Councillor P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice-Chairman)

Councillors CM Bartrum, DJ Benjamin, ME Cooper, PGH Cutter, SPA Daniels,
JHR Goodwin, R Mills, A Seldon and DC Taylor

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. NAMED SUBSTITUTES (IF ANY)

To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.

3. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is

4. MINUTES

To approve and sign the Minutes of the meeting held on 29 January, 2008.

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| 5. | <p>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MA16 (PART) IN THE PARISH OF MATHON</p> <p>To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MA16 in the parish of Mathon.</p> <p>Ward: Hope End</p> | 5 - 6 |
| 6. | <p>HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS MD13 AND MD16 (PARTS) IN THE PARISH OF MUCH DEWCHURCH</p> <p>To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths MD13 and MD16 (parts) in the parish of Much Dewchurch.</p> <p>Ward: Valletts</p> | 7 - 8 |
| 7. | <p>CONSIDERATION OF AN APPENDIX TO THE HACKNEY CARRIAGE AND PRIVATE HIRE POLICY PROVIDING GUIDANCE ON THE RELEVANCE OF CONVICTIONS. THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976, TOWN POLICE CLAUSES ACT 1847</p> <p>To consider including guidelines about convictions with respect to licensing dual drivers as an appendix to the Taxi and Private Hire Policy.</p> <p>Wards: County-wide</p> | 9 - 18 |
| 8. | <p>PROCEDURAL ARRANGEMENTS</p> <p>To note the procedural arrangements for the meeting.</p> | 19 - 20 |
| 9. | <p>HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING - DEVIATION BY PETER CHARLES FERNEYHOUGH FROM VEHICLE LICENCE CONDITION NUMBER 2.1</p> <p>To consider a report to licence a vehicle older than that which is allowed by the Council's licensing conditions.</p> | 21 - 22 |
| 10. | <p>HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING - DEVIATION BY STUART PREWAR FROM VEHICLE LICENCE CONDITION NUMBER 2.1</p> <p>To consider a report to licence a vehicle older than that which is allowed by the Council's licensing conditions.</p> | 23 - 24 |

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following items will not be, or is likely not to be, open to the public and press at the time they are considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below

- | | |
|--|----------------|
| <p>11. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a hackney carriage/private hire driver's licence.</p> | <p>25 - 28</p> |
| <p>12. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976</p> <p>To consider an application for a hackney carriage/private hire driver's licence.</p> | <p>29 - 32</p> |

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

**MINUTES of the meeting of Regulatory Committee held at
The Council Chamber, Brockington, 35 Hafod Road,
Hereford on Tuesday, 29th January, 2008 at 2.00 p.m.**

Present: Councillor P Jones CBE (Chairman)
Councillor JW Hope MBE (Vice Chairman)

Councillors: DJ Benjamin, PGH Cutter, JHR Goodwin, R Mills, A Seldon
and DC Taylor

In attendance: Councillors

80. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors CM Bartrum, ME Cooper and Mrs SPA Daniels

81. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

82. DECLARATIONS OF INTEREST

There were no declarations made at the meeting.

83. MINUTES

RESOLVED: That the Minutes of the meeting held on 18 December, 2007 be approved as a correct record and signed by the Chairman

84. REVIEW OF THE LICENSING POLICY AND CUMULATIVE IMPACT POLICY FOR COMMERCIAL ROAD AREA OF HEREFORD CITY - LICENSING ACT 2003 AND GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

The Licensing Manager said that a requirement of the Licensing Act 2003 was that Local Authorities were obliged to review their Licensing Policies every three years. She said that she had undertaken a comprehensive review of the Licensing Policy, and the Cumulative Impact Policy for the Commercial Road area of Hereford which were introduced in early 2005. She advised that the Policies related to the control of public entertainment, alcohol sales and consumption, and prevention of associated anti-social behaviour in designated areas. Section 4 of the Act 2003 required Local Licensing Authorities to promoting the following licensing objectives:-

- a) the prevention of crime and disorder;
- b) public safety;
- c) the prevention of public nuisance
- d) the protection of children from harm.

The Licensing Manager said that extensive consultation has been carried out with the police, relevant bodies and interested parties and she provided the Committee with details of the responses which had been received. The Police and appropriate organisations were of the view that the cumulative impact Policy for the Commercial Road area of Hereford had proved to be a great success and that it should continue to be in place. It was aimed at regulating the effect that all the licensed and public entertainment premises have on crime and disorder in a concentrated area. It provided a way of controlling the cumulative effect that a number of licensed premises had on one area, rather than dealing with premises on an individual basis in isolation from each other. The Licensing Manager advised that the Council was part of the Herefordshire Joint Tasking Group, which involved departments of the Council and other partner agencies who worked with the police to reduce crime and disorder in the County. She suggested that the Council should continue with this role.

The Committee considered all the points put forward by the Licensing Manager and agreed with the proposals. Councillor PGH Cutter asked about a cumulative impact policy for the central area of Ross-on-Wye. The Licensing Manager said that she would take up the matter with the Police in the first instance then refer it to the Herefordshire Joint Tasking Group. It was also agreed that the Licensing Manager provide the Committee with further details about how the policies were being applied and how effective they were, at a forthcoming meeting.

RESOLVED

That it be recommended to Council that the licensing policy and special policy for the Commercial Road area of Hereford as set out in Appendix A in the report of the Head of Environmental Health and Trading Standards, be adopted in respect of the period 2008 – 2011 and that it will also include provision for the Herefordshire Joint Tasking Group on licensing.

85. SETTING OF FEES IN RESPECT OF TEMPORARY USE NOTICES IN ACCORDANCE WITH REGULATION 7 – THE GAMBLING ACT 2005 (TEMPORARY USE NOTICES) REGULATIONS 2007

The Committee has considered a report about fees to be charged for Temporary Use Notices (TUNS) under Part 9 of the Gambling Act 2005. Section 212 of the Act has provision for the Local Licensing Authorities set its own fees subject to them not exceeding the maximum set by the Government at £500. At its meeting on 25th May 2007 Council delegated this function to the Regulatory Committee to deal with. The regulations about TUNS came into force on 1 December 2007 and a TUN may only be granted to a person or company holding an operating licence for gambling which has been granted by the Gambling Commission. The Notices allow the use of premises for gambling, where there is no premises licence, but where a gambling operator wishes to use the premises temporarily for providing facilities for gambling. The same premises cannot be subject to a TUN for more than 21 days in any 12 month period, but may have more than one TUN in that period provided the 21 days is not exceeded. The Committee has decided to set the fee at £500 initially, on the understanding that it will be reviewed in twelve months time when data will be available enable a review of the costs and fees. This is in line with the approach being used by other Local Licensing Authorities.

86. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for hearing appeals to ensure that the laws of natural justice were followed to give a fair hearing for applicants and to the Licensing Officers.

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following items will not be, or are likely not to be, open to the public and press at the time they are considered.

RESOLVED: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below.

These items disclose information relating to any particular applicant for or recipient of or former recipient of, any service provided by the authority.

87. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE MATTERS REGARDING A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 8 and provided the Committee with the circumstances which had given rise to the need for an incident regarding the holder of a dual Hackney Carriage/Private Hire driver to be licence to be referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him being investigated by the Police and the Licensing Manager gave her views on the matter.

Having considered all of the facts put forward by the Licensing Manager and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should be permitted to continue as a licensed driver but that the matter would be reviewed if the Police decided to charge him for an offence.

88. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE MATTERS REGARDING A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 9 and provided the Committee with the circumstances which had given rise to the need for an incident regarding the holder of a dual Hackney Carriage/Private Hire driver to be licence to be referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him being investigated by the Police and the Licensing Manager gave her views on the matter.

Having considered all of the facts put forward by the Licensing Manager and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should be permitted to continue as a licensed driver but that the matter would be reviewed if the Police decided to charge him for an offence.

89. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 10 and provided the Committee with the circumstances which had given rise to the need for an application for a dual Hackney Carriage/Private Hire driver's licence being referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that he should be allowed to become a licence holder.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that he should be granted a licence.

90. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER LICENCE - TO DETERMINE A DUAL DRIVERS LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Licensing Manager referred to agenda item No. 11 and provided the Committee with the circumstances which had given rise to the need for an application for the renewal of a dual Hackney Carriage/Private Hire driver's licence to be referred to the Committee. The applicant provided the Committee with details of the circumstances which had given rise to him receiving a conviction and the reasons why he felt that his licence should be renewed.

Having considered all of the facts put forward by the Licensing Officer and the applicant, the Committee was satisfied that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his licence should be renewed.

The meeting ended at 3.55 p.m.

CHAIRMAN

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH MA16 (PART) IN THE PARISH OF MATHON

Report By: Public Rights of Way Manager

Wards Affected:

Hope End

Purpose

To consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpath MA16 in the parish of Mathon.

Considerations

- 1 Mr and Mrs Philpotts (who are the landowners of Ferney Cottage) made the application on 30th August 2007. Their reasons for making the application were in connection with the sale of their property, which has become necessary due to personal circumstances. They feel that the presence of a public footpath that runs through the garden and in close proximity to the house at Ferney Cottage may negatively affect the sale. The proposed diversion route has been in use as a permissive path for some years.
- 2 The applicants have carried out all pre order consultation. The Open Spaces Society representative has raised several issues; these include:
 - The wetness of the area of ground adjacent to the fence line between points B and C
 - The width of the section of path between points A and C, which passes through a corridor formed by a fence and a hedgerow
 - The kissing gate at point C, which they feel to be too narrow

The issues with regard to the wet ground and path width have been resolved to the Open Spaces Society's satisfaction; copies of the correspondence between the Public Rights of Way department and their local representative are attached (see annexes A and B.) It is intended that the issue about the gate design will be resolved before any Order is made, as it should be relatively simple to rectify.

The proposal has general agreement of the Ramblers' Association, Malvern Hills District Footpath Society, Cyclists Touring Club and Mathon Parish Council. The adjoining landowner has given his consent and agreed not to claim any compensation (see annexes C and D;) his property is also affected by the application.
- 3 Both the Open Spaces Society and the Malvern Hills District Footpath Society have indicated that they would view the diversion proposal more favourably if the landowner were to also dedicate a new section of footpath; this would run along the access drive to Ferney Cottage and link footpath MA16 with county road C1162. The Malvern Hills District Footpath Society have suggested that this proposed new section of footpath may already have become a right of way due to uninterrupted usage. The landowner is willing to add this section of path to the Definitive Map via a

creation agreement, if the diversion is successful. This would save Council resources, because processing a dedication agreement is significantly less costly than processing a Definitive Map Modification claim. As a result, it has been decided to prioritise the processing of the diversion application, alongside which the dedication is being processed. The dedication agreement has been drafted and signed by the landowners, but not sealed to bring it into operation.

- 4 The applicants have agreed to pay for advertising and to reimburse, in full, the Council's costs incurred in making the diversion order. They have also been asked to sign a maintenance agreement in respect of the retaining wall that forms a revetment on one side of the section of path between points A and C; if the diversion is successful, this will bind them and their successors in title in meeting the costs of any works required to the wall. If the dedication agreement is brought into operation, Herefordshire Council will meet the costs of advertising the agreement and installing a roadside signpost.
- 5 The local members Councillor Mills and Councillor Stockton support the application.
- 6 The proposed diversion meets the specified criteria as set out in section 119 of the Highways Act 1980 in that:
 - The proposal benefits the owner of the land crossed by the existing path.
 - The proposal does not alter the point of termination of the paths.
 - The proposal is not substantially less convenient to the public.

Alternative Options

Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could reject the application on the grounds that it does not contribute sufficiently to the wider ambitions and priorities of the Council.

Risk Management

There is a risk that the Order will be opposed, leading to additional demand on existing staff resources.

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Members – Councillor R Mills and Councillor RV Stockton
- Mathon Parish Council.
- Statutory Undertakers

Recommendation

That a public path diversion order is made under Section 119 of the Highways Act 1980, as illustrated on drawing number: D384/265-16

Appendices

Order Plan, drawing number: D384/265-16

Annex A-Letter to Open Spaces Society representative, dated 11th January 2008

Annex B-Letter from Open Spaces Society representative, dated 21st January 2008

Annex C-Draft Order and Schedule, signed by adjoining landowner

Annex D-Affected landowner compensation indemnity form, signed by adjoining landowner

HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATHS MD13 AND MD16 (PARTS) IN THE PARISH OF MUCH DEWCHURCH

Report By: Public Rights of Way Manager

Wards Affected:

Valletts

Purpose

The County of Herefordshire District Council (the Council) to consider an application under the Highways Act 1980, section 119, to make a public path diversion order to divert part of footpaths MD13 and MD16 (parts) in the parish of Much Dewchurch.

Considerations

- 1 The application was made on 7th October 1997, by Mr A Twiston-Davies (who is the landowner.) The reasons for which were to, 'ensure security and privacy in an otherwise remote area.'
- 2 Pre-order consultation of the proposal (appendix 1) was carried out by the Public Rights of Way department in January 1998. The proposal sustained an objection from the Ramblers' Association (Appendix 2) and Open Spaces Society (appendix 3) due to a raised manhole on the proposed route and the proposed route being boggy and obstructed by fences, a ditch and an open field drain. The proposed order plan was also felt to be an inaccurate depiction of the site on the ground.
- 3 The proposal was re-visited in 2005 and a GPS survey of the proposed route plotted to ensure accuracy. The proposed route was amended slightly to avoid poached area (by horses) around feeder troughs and to avoid manholes/drains/ditches etc. The applicant agreed the new proposals and they were sent to pre-order consultation once again in February 2006. (appendix 4)
- 4 Once again objections were received from the Ramblers' Association (appendix 5) and the Open Spaces Society (appendix 6) due to the proposed route being '2.5 times longer than the existing route' and the proposed route being water-logged. It was therefore thought to be substantially less convenient to the public.
- 5 The local member, Cllr. Phil Turpin supported the proposals, as did the Much Dewchurch Parish Council.
- 6 The applicant/agent was informed of the objections and a suggestion was made to amend the proposals once again to move the route so that it followed the drive to 'The Woodlands' and avoided the paddocks altogether.
- 7 The applicant was invited, in February 2007, to amend the proposals and send them out to pre-order consultation themselves as procedures had now altered. A further

letter was sent on 8th October 2007 and again on 10th November 2007 to which we have had no reply. The letter of 10th November 2007 stated clearly that if a reply was not received by 1st of December, that a recommendation would be made to the Regulatory Committee that the application be rejected.

- 8 The proposed diversion does not meet the specified criteria as set out in section 119 of the Highways Act 1980 in that:
- The proposal is substantially less convenient to the public.

This is because it is longer than the existing route and is waterlogged.

Alternative Options

Under Section 119 of the Highways Act 1980 the Council has the power to make diversion orders. It does not have a duty to do so. The Council could agree to make the order, however the objections would ensure that the order would have to be sent to the Inspector for a decision which may lead to a public inquiry thus leading to additional time on staff resources.

Risk Management

There is no risk

Consultees

- Prescribed organisations as per annexe E of Department of the Environment Circular 2/93.
- Local Member – Cllr. Phil Turpin
- Much Dewchurch Parish Council.
- Statutory Undertakers

Recommendation

That a public path diversion order is not made under Section 119 of the Highways Act 1980, as illustrated on the attached plan (appendix no 1) and that the application is rejected.

Appendices

- Appendix 1 Original Order Plan, drawing number:
- Appendix 2 Letter from The Ramblers Association 16th Feb 1998
- Appendix 3 Letter from The Open Spaces Society 20th Feb 1998
- Appendix 4 Amended Order Plan drawing no D302(i)276-13,16
- Appendix 5 Letter from The Ramblers' Association 16th March 2006
- Appendix 6 Letter from Open Spaces Society 18th March 2006

**CONSIDERATION OF AN APPENDIX TO THE
HACKNEY CARRIAGE AND PRIVATE HIRE POLICY
PROVIDING GUIDANCE ON THE RELEVANCE OF
CONVICTIONS. THE LOCAL GOVERNMENT
(MISCELLANEOUS PROVISIONS) ACT 1976, TOWN
POLICE CLAUSES ACT 1847**

**REPORT BY: Head of Environmental Health and Trading
Standards**

Purpose

1. That the Committee consider the guidelines to the relevance of convictions with respect to licensing dual drivers as an appendix to the Taxi and Private Hire Policy.

Legal Background – Relevance of Offences

2. Under the terms of the Local Government (Miscellaneous Provisions) Act 1976 s 51 It is a requirement of local authorities that no licence should be granted to someone unless they are “fit and proper” person.
3. The Local Authority is entitled to adopt policies in relation to hackney carriage and private hire licensing. This was established in the case of *Stringer V minister of Housing and Local Government*.

Background

4. The licensing Committee requested that a report be brought to the Committee regarding the relevance of convictions with respect to issuing and retaining dual drivers licences. A report was submitted on the 20th November 2007, the decision was deferred for the Mr Hardy from the legal team to make his amendments.
5. As part of the application process for dual driver’s licences, all applicants must undertake an enhanced criminal records bureau (CRB) check at the time of application. This check must be repeated at least every three years.
6. The guidance in Appendix 1 is the draft guidance submitted in November 2007, and was based upon advice from the DOT Circular 2/92, HO Circular 123/92 and CRB guidance. It is evident that some of the wording is open to interpretation, but this is to enable the licensing authority to exercise the necessary discretion when assessing individual cases.
7. Mr Hardy has submitted revised guidance at Appendix 2.
8. Under the Local Government (Miscellaneous Provisions) Act 1976, should a licence application be refused or a licence be suspended or revoked for any reason, the applicant has the right to appeal the decision to Magistrate’s Court within twenty-one days of receiving notice of the intention to refuse/suspend/revoke the licence. During

the period allowed for an appeal to be lodged, and up to the time the appeal is determined, a licensee has a statutory right to continue working as a dual driver. This is due to change in January 2007 when this right is removed and any refusal, suspension or revocation will be take immediate effect.

RECOMMENDATION

That the Committee gives consideration to the guidelines outlined at Appendix 1 and advises officers whether it wishes to adopt the guidance or amend them as is felt to be necessary, and to provide guidance on any amendments.

Appendix 1

APPENDIX TO TAXI AND PRIVATE HIRE POLICY

STATEMENT OF POLICY ABOUT RELEVANT CONVICTIONS

Background Legislation

Section 59 (1) (a) The Local Government (Miscellaneous Provisions) Act 1976 states that a District Council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a 'fit and proper' person to hold the licence.

An enhanced CRB check is carried out on all drivers applying for a dual drivers licence, and every 3 years after that. The CRB shows details of Police Records of Convictions, Cautions, Reprimands and Final Warnings. Enhanced disclosures contain details of all current convictions, as well as spent convictions, cautions, reprimands or final warnings, plus details of other information held by the police.

The criteria for spent convictions as defined by Rehabilitation of Offenders Act 1974 has the effect of removing a convicted persons criminal record, certain offences are removed after a stipulated time. Certain professions including Taxi drivers are exempt from the Act therefore spent and unspent convictions can be considered for applications in relation to determining whether they are a 'fit and proper persons'.

Fit and Proper Person

There is no statutory definition of this phrase. It is for an applicant to demonstrate their fit and properness rather than the Council's Licensing staff having to prove a lack of fit and properness.

Based on established practice the Council will take as a starting point the test as follows:-

"would you (as a member of the Licensing Committee or other person charged with the ability to grant a hackney carriage driver's licence) allow your son or daughter, spouse or partner, mother or father , grandson or granddaughter or any other person for whom you care , to get into a vehicle with this person alone?"

Suspension of Drivers

Licensed drivers have an obligation to tell the Council of any involvement in incidents involving the Police whether resulting in a criminal charge or not.

Upon receipt of information about any such incident whether from the driver or not the Licensing Team will assess whether or not suspension should take place prior to the issue being put before the Council's Regulatory Committee but in each and every case the Regulatory Committee will consider whether or not suspension is appropriate taking into account:-

- a) Seriousness of the allegation.
- b) Whether or not the allegation related to work as a driver of a taxi and private hire vehicle.
- c) Whether or not the person in question has been charged by the Police.
- d) The length of time that has elapsed since the alleged incident and any subsequent behaviour between that time and the time at which the Regulatory Committee considers the matter.

Regulatory Committee will also review any suspension made if any circumstances have changed in relation to the allegation (e.g. Police drop any charges).

HEREFORDSHIRE COUNCIL WILL OFFER THE FOLLOWING ADVICE FROM THE CRIMINAL RECORD BUREAU ON ASSESSING THE RELEVANCE OF CRIMINAL RECORDS

The suitability of a person with a criminal record will vary, depending on the nature of the job and the details and circumstances of any convictions. Deciding on the relevance of convictions is not an exact science, an assessment of an applicant's skills, experience and conviction circumstances should be weighed against the risk criteria for the job. Responsible parties need to identify what risks might be involved.

To facilitate this process, an applicant's criminal record should be assessed in relation to the tasks he or she will be required to perform and the circumstances in which the work is to be carried out. He will consider the following when deciding on the relevance of offences to particular posts:

- Does the post involve one-to-one contact with children or other vulnerable groups as employees, customers and clients?
- What level of supervision will the post holder receive?
- Does the post involve any direct responsibility for finance of items of value?
- Does the post involve direct contact with the public?
- Will the nature of the job present any opportunities for the post holder to reoffend in the place of work?

The answers to such questions should help organisations to determine the relevance of convictions to specific posts. For example, pedophile, or child pornography offences would certainly disqualify any person required to work with children. Some violent offences would be relevant to positions involving unsupervised contact with the public. Fraud should be considered in relation to posts involving the handling of money or possessions.

General Factors

It is recommended that the following issues are taken in account as a minimum requirement:

- The seriousness of the offence and its relevance to the safety of other employees, customers, clients and property
- The length of time since the offence occurred
- Any relevant information offered by the applicant about the circumstances, which led to the offence being, committed, for example the influence of domestic or financial difficulties.
- Whether to offence was a one-off, or part of a history of offending
- Whether the applicant's circumstances have changed since the offence was committed, making reoffending less likely
- The country in which the offence was committed, some activities are offences in Scotland but not in England and Wales, and vice versa
- Whether the offence has since been decriminalized by Parliament
- The degree of remorse, or otherwise, expressed by the applicant and their motivation to change.

It is recommended the following is not taken into consideration:

- Any financial investment or commitment the applicant or licence holder has entered into (e.g. purchasing a vehicle in expectation).
- Home circumstances other than those described above which may impact on on possible re-offending.
- Employment offers or prospects as a driver.

When submitting an application for a licence to drive a hackney carriage or private hire vehicle an applicant is requested to declare any convictions or cautions you may have under the Rehabilitation of Offenders Act 1974. The information you give will be treated in confidence and will only be taken into account in relation to your application.

The disclosure of a criminal record or other information will not debar you from gaining a licence unless the authority considers that the conviction renders you unsuitable. In making the decision the authority will consider the nature of the offence, how long ago and what age the applicant was when it was committed and any other factors, which may be relevant.

It is usually in the best interests of everyone if the driver or perspective driver can attend to present their own points to the Committee and answer any questions. Some people are uncomfortable doing this, in which case a suitable representative to speak on their behalf is recommended. Any written submissions should be forwarded to the Council in good time to include it with the papers presented to the Regulatory Committee.

GUIDELINES RELATING TO THE RELEVANCE OF CONVICTIONS

GENERAL POLICY

1. Each case will be decided on its own merits having regard to this policy, the provisions of the Rehabilitation of Offenders Acts and amendments and the protection of the public. Hackney carriage and private hire drivers are expected to be persons of trust and therefore the principal considerations of any case will be whether the property or well being of the public may be at risk
2. Sentences imposed by the Courts reflect the seriousness of an offence and/or a person's past history; for that reason the Council regards a crime as a '**serious crime**' where indicated in this Policy as:-

Any Offence where the term of the sentence passed on conviction is a sentence, which is excluded from the Rehabilitation of Offenders Act 1974 by virtue of section 5 of that Act. That is:

- a) A sentence of imprisonment for life.
- b) A sentence of imprisonment, youth custody, detention in a young offender institution or corrective training for a term exceeding 30 months.
- c) A sentence of preventative detention.
- d) A sentence of detention during Her Majesty's Pleasure or for life under section 90 or 91 or the Powers of Criminal Courts (Sentencing) Act 2000, 205(2) or (3) of the Criminal Procedure (Scotland) Act 1975, or a sentence of detention for a term exceeding 30 months passed under section 91 of the said Act of 2000 (young offenders convicted of grave crimes) or under section 206 of the said Act of 1975 (detention of children convicted on indictment) or corresponding Court-martial punishment; and
- e) A sentence of custody for life.

A conviction for "serious crime" shall not permanently bar an applicant from obtaining a licence but he/she is expected to have remained free of conviction for any criminal offence, other than minor traffic offences, for three to five years from the end of a served sentence for a "serious crime". The circumstance of the offence, the

sentence imposed by the Court or the fact an offence is an isolated one, may be sufficient in part in allowing discretion when considering the issue of a licence but the overall protection of the public must remain the paramount issue.

Where a person has been sentenced to over 5 years imprisonment at any one time the Council regards a sentence of this length as indicating that the offence was very serious. It is unlikely that a licence will be granted or maintained. It must be for the Court to decide the outcome if an applicant with such a history wishes to pursue an appeal against refusal of licence.

In relation to persons whose name appears on the Sex Offenders Register it is unlikely that a licence will be granted or maintained. It must be for a Court to decide the outcome of any applicant with such history wishes to pursue an appeal.

If an existing licence holder is convicted of any offence and is sentenced to any term of imprisonment, whether suspended or not, or their name is placed on the Sex Offenders Register, then (unless indicated otherwise in "Stances" below) their licence will be suspended immediately pending consideration of their "fit and proper" status.

Cautions are given when there is sufficient evidence for a conviction and the individual admits their guilt. Therefore, cautions must be considered as a conviction.

Stances on specific types of offences;

a) Minor Traffic Offences

An applicant whose ordinary driving licence is endorsed with a minor traffic offence, e.g. obstruction, waiting in a restricted street, speeding, etc., shall not be prevented from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's ordinary driving licence then a dual driver badge may be granted after its restoration (subject to statutory requirements), but a warning may be issued as to future conduct.

In relation to existing licence holders an isolated minor traffic offence shall not affect the validity of their licence but more than one such type of offence in a twelve month period may cause their "fit and proper" status to be reviewed.

b) Major Traffic Offences

An applicant who has an isolated conviction for reckless driving or driving without due care and attention, etc., will normally be warned as to future driving and advice on the standard expected of Dual drivers. More than one conviction for this type of offence within the last three years will merit refusal and no further application shall be considered until a period of one to three years free from a conviction of a similar nature has elapsed.

In relation to existing licence holders any conviction for a major traffic offence shall cause their "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have fallen below the standards required for licensed drivers.

c) Drunkenness with motor vehicle

A serious view is taken of convictions of driving or being in charge of a vehicle while under the influence of drink.

An applicant who has an isolated conviction may not necessarily be debarred from holding a licence but strict warnings may be given as to future behaviour. More than one conviction for these offences will raise grave doubts as to the applicant's fitness to hold a licence. At least three years shall 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 medical examination shall be arranged before the application is entertained. If an applicant is found to be an alcoholic a period of five years shall elapse after treatment is complete before a further licence application is considered.

In relation to existing licence holders any conviction for drunkenness in a motor vehicle shall cause the "fit and proper" status to be reviewed immediately as the Council will regard any such conviction as indicating that they have seriously fallen below the standards required for licensed drivers, and a licence(s) may well be suspended immediately pending consideration of this.

d) Drunkenness not in a motor vehicle

An isolated conviction for drunkenness may not debar an applicant or an existing licence holder for obtaining/continuing to hold a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see © above). In some cases, a warning may be given and/or their "fit and proper" status may be reviewed as appropriate.

e) Drugs

An applicant with a conviction for any offence where drugs have been used, supplied or stolen shall be required to show a period of at least five years free of conviction following the servicing of any sentence imposed by a court before an application is entertained, or seven years after detoxification treatment has been successfully completed if he/she was deemed to be an addict.

In relation to existing licence holders any conviction related to drugs shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

f) Further Offences of Indecency

An applicant who has convictions or cautions for offences of Indecent Exposure or any other sexual related offence not previously mentioned shall not automatically be debarred from holding a licence. Each application must be considered in isolation and a guide of 'free from such conviction or caution for at least five years shall be

used. If the conviction relates to an offence against children then the offence shall be considered as if it were a 'serious crime'.

In relation to existing licence holders any conviction relating to further offences of indecency shall cause their "fit and proper" status to be reviewed immediately. The Council will regard any such conviction as indicating that such status is seriously in doubt and a licence(s) may well be suspended immediately pending consideration of this.

g) All Other Crimes

All other applications where the applicant has convictions for criminal offences, where sentences of less than those previously mentioned are imposed, or where fines, probation, supervision order or conditional discharges have been imposed and a significant period of time has elapsed since conviction, should be treated entirely on their own merits.

In relation to existing licence holders if any person receives a conviction or caution for any criminal offence within the category of 'all other crime offences' then the suspension of their licence will be imposed or considered giving due thought to their "fit and proper" status in the light of the offence, sentence and circumstances presented.

REGULATORY COMMITTEE
LICENSING APPEAL PROCEDURE

1. Introduction by Clerk to the Panel.
2. Licensing Officer outlines the case.
3. Applicant (or his solicitor) sets out his case.
4. Questions asked by the Panel or Licensing Officer or Applicant.
5. Applicant (or his solicitor) asked if he would like to make further comment or representation, or if he requires time to comment or investigate (if so, Chairman defers application).
6. In dealing with each application, the applicant (and any representative) should also withdraw should be asked to withdraw when they have finished their presentation. All officers, other than the Clerk to the Panel, should also withdraw. It would be preferable for the applicant and officers to await the decision at different locations.
7. If either the applicant or the officer are needed to furnish additional information, they should all be invited back before the Panel. When the additional information has been furnished, they should all be asked to leave again.
8. The Panel can then reach a decision in the usual way, but in the absence of parties.
9. The applicant and officers will then be invited to return. The Chairman will announce the decision. The Chairman should also say that the decision will be communicated in writing in due course, and that the applicant will be informed of any right of appeal (if the decision is a refusal).
10. When the first applicant is finished, that applicant should leave. Deal with the second application the same way.

HACKNEY CARRIAGE VEHICLE LICENSING DEVIATION BY PETER CHARLES FERNEYHOUGH FROM VEHICLE LICENCE CONDITION NUMBER 1.1

**REPORT BY: Head of Environmental Health and
Trading Standards**

Purpose

1. The report introduces an application made by Mr Ferneyhough to deviate from the standard condition number 1.1. This condition states: -

For an application for a Hackney Carriage Licence, the vehicle to be licensed shall be a purpose built Hackney Carriage, or constructed or adapted to carry disabled persons whilst remaining in their wheelchairs, in accordance with the provisions set out in section 20 of these conditions. **The vehicle will be 5 years of age or younger**, the age of the vehicle will be determined by the date of first registration on the registration document. The licensed vehicle shall be replaced upon or before reaching fifteen years of age.

Legal Background

2. Under the terms of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles, drivers and operators.
3. The standard licence conditions were approved at Regulatory Committee on the 18th December 2007.

Issues

4. Mr Ferneyhough made an application for a new vehicle licence on the 8th February 2008 (Appendix 2). The application contains a request for a vehicle which does not comply fully with the standard conditions and policy of Herefordshire Council. The vehicle was five years old on 7th February 2007 and therefore is just over 6 years old.
5. In light of this application the licence has not been issued, instead referred to this Regulatory Committee for consideration and determination whether he is a fit and proper person to hold a licence.

Options

It is for the Regulatory Committee to decide whether the vehicle licence: -

- Can be granted outside of the standard conditions and or policy.
- Cannot be granted and the licence be refused.
- Deferred decision in order to get more information.
- or reach some other decision.

Appendix 1 – standard vehicle licence conditions

Appendix 2 – copy of application form

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE LICENSING DEVIATION BY STUART PREWAR FROM VEHICLE LICENCE CONDITION NUMBER 2.1

REPORT BY: Head of Environmental Health and Trading Standards

Purpose

1. The report introduces an application made by Mr Prewar to deviate from the standard condition number 2.1 'For new application for a Private Hire Licence, the vehicle to be licensed shall not be more than two years old, the age of the vehicle will be determined by the date of first registration on the registration document. The vehicle can be a saloon, estate car, MPV or a purpose built vehicle, or constructed or adapted. The licensed vehicle shall be replaced upon or before reaching eight years of age'.

Legal Background

2. Under the terms of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976 local authorities may make reasonable conditions for the regulation of both hackney carriages and private hire vehicles, drivers and operators.
3. The standard licence conditions were approved at Regulatory Committee on the 20th March 2007 following a full consultation period.
4. Section 53 of Road Safety Act 2006 abolished the "contract exemption" under Section 75 (1) of the Local Government (Miscellaneous Provisions) Act 1976. Mr. Prewar was availing himself of this exemption prior to the change.

Issues

5. Mr Prewar made an application for a new vehicle licence on the 11th February 2008 (Appendix 2). The application contains a request for a vehicle which does not comply fully with the standard conditions and policy of Herefordshire Council. The vehicle was 2 years old on 23rd June 2006. Therefore the vehicle is just over 3 ½ years old.
6. In light of this the licence has not been issued, instead referred to this Regulatory Committee for consideration and determination whether the vehicle should be licensed outside the standard conditions.

Options

It is for the Regulatory Committee to decide whether the vehicle licence: -

- Can be granted outside of the standard conditions and or policy.
- Cannot be granted and the licence be refused.
- Deferred decision in order to get more information.
- or reach some other decision.

Appendix 1 – standard vehicle licence conditions

Appendix 2 – copy of application form

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Document is Restricted

