

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Tuesday 9 February 2010 at 2.00 pm

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

Councillors: CM Bartrum, DJ Benjamin, PGH Cutter, SPA Daniels, JHR Goodwin, RC Hunt, PJ McCaull, A Seldon and JD Woodward

76. APOLOGIES FOR ABSENCE

There were no apologies for absence submitted at the meeting.

77. NAMED SUBSTITUTES (IF ANY)

There were no named substitutes present at the meeting.

78. DECLARATIONS OF INTEREST

There were no declarations of interest made at the meeting.

79. MINUTES

RESOLVED: That the Minutes of the meeting held on 8th December, 2009 be approved as a correct record and signed by the Chairman.

80. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER FOOTPATH EH18 (PART) IN THE PARISH OF EWYAS HAROLD

The Interim Parks, Countryside and Leisure Development Manager presented a report about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath EH18 in the parish of Ewyas Harold. He said that the application had originally been submitted in 1997 by the then owner of Golden Grove who wished to avoid the unnecessary inconvenience and embarrassment which would be caused by walkers passing through the garden of his property. Pre-Order consultation was undertaken and although the local parish council agreed to the proposals, the Ramblers Association and the Open Spaces Society raised objections on the grounds that the diversion would remove the termination point of the path away from the termination point of the path on the other side of the road.

The property was sold and the new owners made a fresh application in May 2004 and agreed to pay for advertising and to reimburse, the Council's costs in full which would be incurred in making an Order. They also secured the written agreement of the neighbouring landowner, whose land the proposed route would cross. The proposals were sent out again to pre-order consultation because of the length of time which had elapsed since the first application. There were no objections from statutory undertakers or the Local Ward Member, and the local parish council supported the proposals. The Open Spaces Society stated that they were not minded to object to the proposals, subject to a gate being installed at the junction with the road. The Ramblers Association objected to the principle of moving the path away from the route which continued on the other side of the road. The Council's Highways Department

raised concerns about the poor visibility at the point that the proposed route met the road but were not minded to object. The landowner of the diversion route, although agreeing to the diversion, was resolute in his opinion to only have a stile at the roadside, not a kissing gate as suggested by the Area Rights of Way Officer. The applicant was subsequently advised that the application would be unable to proceed without the landowners' consent to the installation of a gate. In December 2007, the applicants suggested that they might have an alternative route but despite subsequent reminders nothing further has been heard from them. The Interim Parks, Countryside and Leisure Development Manager suggested that no further action be taken and the Committee agreed with his proposal to reject the application as it currently stood.

RESOLVED THAT:

That a Public Path Diversion Order be not made under Section 119 of the Highways Act 1980, in respect of Footpath EH18 (part) as illustrated on plan D273/142-18 in the report of the Interim Parks, Countryside and Leisure Development Manager, and that the application be rejected.

81. HIGHWAYS ACT 1980, SECTION 119. PROPOSED PUBLIC PATH DIVERSION ORDER, FOOTPATH LW4 (PART) IN THE PARISH OF LLANWARNE

A report was presented by the Interim Parks, Countryside and Leisure Development Manager about an application for a Diversion Order under the provisions of Section 119 of the Highways Act 1980 in respect of part of Footpath LW4 Llanwarne. He explained the events which had given rise to the application and the legal requirements which the applicants needed to fulfil in respect of land ownership before an Order could be made. He reminded the Committee that at its meeting on 31st January, 2006 it had been decided to defer a decision on the application for a period of six months to allow the applicants further time to resolve the outstanding issues. Despite some attempts by the applicants to resolve the matter, no further progress had been made in obtaining landowner consent for the diversion. He also said that the applicants had failed to confirm that they would indemnify the Council against any possible claim for compensation in respect of land ownership if an Order was made. Because neither requirement had been fulfilled, the applicants had been informed that it would be recommended to the Committee that the application be rejected. When the matter came back to the Committee in January 2007 it was decided that consideration of the application be deferred for further investigation to be made about whether the revised route of Footpath LW4 (part) Llanwarne could be deemed to be in existence after twenty years.

The Interim Parks, Countryside and Leisure Development Manager provided the Committee with information about his investigations into the matter since January 2007 and the discussions which had been held with the applicants. He also explained the assessment that had been carried out about the practical issues regarding the possibility of a Definitive Map Modification (DMMO) application to record the proposed diversion route as a public right of way on the basis of uninterrupted useage. He advised that processing a DMMO application was likely to take some years due to the current backlog. However, even if successful, such a move would not extinguish the part of footpath LW4 that was subject to the diversion application. To do so would require an additional Public Path Extinguishment Order (under section 118 of the Highways Act 1980) to be made and confirmed. Despite the presence of a second route in close proximity, it could not be guaranteed that an extinguishment application would be successful. In the interim the Council would continue to have legal responsibilities in respect of both this section of footpath LW4 and any new route added via a DMMO. He pointed out that the applicants had repeatedly refused to sign a form indemnifying the Council against possible compensation claims as a result of the proposals. The owners of the land on which the proposed route would pass had not agreed to the proposals

despite many attempts over many years. The proposals were in the applicants' interests and not necessarily in the wider interests of the public, or in the interests of the landowner of the proposed route. In view of the lack of progress he suggested that the application should be refused and said that the Local Ward Member supported this view. The Committee endorsed his suggestion.

RESOLVED THAT:

a Public Path Diversion Order be not made under Section 119 of the Highways Act 1980, in respect of Footpath LW4 (part) as illustrated on plan D52/245-4 in the report of the Interim Parks, Countryside and Leisure Development Manager, and that the application be rejected.

82. PROPOSED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE CONDITIONS. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 AND TOWN POLICE CLAUSES ACT 1847

The Acting Regulatory Services Manager presented his report about proposed revised licence conditions for private hire and hackney carriage vehicles. He outlined the extensive discussion that had been carried out with the trade, partner organisations and other licensing authorities following on from a request from the Hereford Taxi Association in September 2008 for a review to be carried out. A number of successive drafts had been prepared and discussed with the trade and amendments had been made where acceptable under the legislation which governed the way in which licensing conditions could be prepared. He was pleased to report that the stage had nearly been reached where the conditions could be finalised.

Mr J Jones the Chairman of the Association confirmed that agreement had nearly been reached but asked for a few additional amendments to be considered and described what these were. The Committee considered each suggestion together with the views of the Acting Regulatory Services Manager. It was decided that the proposed conditions should be approved and that the Acting Regulatory Services Manager should decide which amendments from the Hereford Taxi Association were acceptable. The final version of the conditions could then be brought back to the Committee for ratification.

RESOLVED THAT:

the proposed hackney carriage/private hire vehicle licence conditions set out in the report of the Acting Regulatory Services Manager be accepted and that he be authorised to include any additional changes suggested by the Hereford Taxi Association which he considers to be acceptable to the Council taking into consideration the licensing legislative framework and best practice, and that the final version of the conditions be submitted to the next meeting of the Committee for ratification.

83. APPLICATION FOR APPROVAL FROM PONTING & BETTY LTD TO BE ON HEREFORDSHIRE COUNCIL'S APPROVED LIST FOR WHEELCHAIR ACCESS FACILITIES & N1 CONVERSION FOR HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

A report was presented by the Acting Regulatory Services Manager suggesting the approval of a company as a manufacturer of wheelchair access vehicles to be used as licensed vehicles in Herefordshire; and as an approved manufacturer of N1 conversions. He said that in July 2008 the Committee had decided on the test to ensure that vehicles retrofitted with wheelchair access facilities were safe and fit for use. The Committee

agreed that the Council would approve wheelchair access vehicles for hackney or private hire only if they met the following criteria:-

- i. The manufacturer must have a vehicle prototype that has passed the 'VOSA –SVA Single Vehicle Approval Standard Test', including class D (disabled) and class P (for import); or
- ii. The manufacturer must prove to the Council that its vehicle has relevant safety standards and is able to demonstrate consistent manufacture to that standard

The Acting Regulatory Services Manager reported that an application had been received from Ponting & Betty for their vehicles to be approved for wheelchair access and for conversion because they believed that they now met the relevant safety standards and were able to demonstrate consistent manufacture to that standard. He said that however, the application only included evidence for their conversions of Mercedes vehicles. The Licensing Team therefore discussed the lacking information with Ponting & Betty. They stated that their wheelchair facilities and conversions had got full European approval and undertook to send further information to support this for all their conversions. This information was received by email on 14th January 2010. Based on the information submitted, the Acting Regulatory Services Manager was satisfied that Ponting & Betty have met the criteria required for their wheelchair installation and conversion for their Volkswagen and Mercedes taxi adaptations, i.e. the Mercedes Town Cab, Mercedes BM8, VW Unique Cab, VW Town Cab, VW Caravelle Cab and VW City 7. Although Ponting & Betty had adequate quality assurance, no independent test certification could be produced to support the suitability of their converted Ford wheelchair installations. Likewise, no independent test certification could be produced to prove that any of the vehicles could be converted solely as minibuses, without wheelchair facilities. The tests were specifically for the wheelchair restraints and their seatbelt anchorage as well as the altered seating around this. He therefore suggested that the company be approved for the vehicles for which they had provided satisfactory evidence but rejected in respect of those they had not. The Committee agreed to his proposals.

RESOLVED THAT:

Ponting & Betty, Bernard Mansell, Media House, St James Mill Road, Northampton N5 5JW be accepted as an approved manufacturer/installer of wheelchair facilities for their Volkswagen and Mercedes taxi adaptations as listed in Table 1 in the report of the Acting Regulatory Services Manager; but not for their Ford Transit adaption; and that they be not approved as a general N1 converter for licensed vehicles.

84. REVIEW OF THE LICENSING 'STATEMENT OF PRINCIPLES' (POLICY) UNDER THE GAMBLING ACT 2005. - GAMBLING ACT 2005

The Acting Regulatory Services Manager presented a report about the adoption of a 'Statement of Principles' under the Gambling Act 2005. He said that the Statement was based upon a generic Statement which has been drawn up by the Local Authorities Coordinators of Regulatory Services (LACORS). It was then amended to taken into account the specific issues and characteristics of the county of Herefordshire, insofar as a gambling policy would apply. He advised that Section 349 of the Gambling Act required that all licensing authorities should prepare and publish a Statement of Principles that they propose to apply in exercising their functions under the Act for a three-year period. The first Statement of Principles was approved by the Council in November 2006 and was now due for renewal. The main objectives of the Gambling Act 2005 were:

- preventing gambling being a source of crime or disorder;
- ensuring that gambling is conducted in a fair and open way; and
- protecting children and the vulnerable people from being harmed or exploited by gambling

The Committee agreed that the Statement of Principles presented by the Acting Regulatory Services Manager should be adopted for a further period of three years.

RESOLVED THAT:

the licensing Statement of Principles policy under the Gambling Act 2005 as set out in the report of the Acting Regulatory Services Manager be adopted.

85. PROCEDURAL ARRANGEMENTS

The Committee noted the procedural arrangements for the following items to ensure that Officers and applicants received a fair hearing.

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

86. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - INCIDENT REGARDING THE HOLDER OF A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 11 and explained the legal proceedings which the suspended driver was subject to. In view of these the Committee decided to defer consideration of the matter until the next meeting.

87. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - INCIDENT REGARDING THE HOLDER OF A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 12 and provided the Committee with details of the circumstances which had given rise to the holder of a dual hackney carriage/private hire driver's licence having his licence suspended. The applicant's father provided the Committee with a full and frank account of the incident which had led to the applicant receiving a police caution. He said that he had not fully appreciated the gravity of a caution and the fact that it needed to be reported to the Acting Regulatory Services Manager

Having considered all of the facts put forward by the applicant and the officers about the matter, 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 decided that his licence should be reinstated. The Committee had concerns that a lack of understanding about the significance of a police caution amongst licence holders and applicants was a frequent occurrence. It was felt that this needed to be carefully explained to those receiving a caution and the Committee asked the Acting Regulatory Services Manager to take this matter up with the Police.

88. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - INCIDENT REGARDING THE HOLDER OF A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 13 and provided the Committee with details of the circumstances which had given rise to the holder of a dual hackney carriage/private hire driver's licence having his licence suspended. He drew attention to the fact that the licence holder had immediately informed the Licensing Section about the incident. The applicant provided the Committee with a full and frank account of the incident which had led to him being arrested and that the matter would be going to Court on 15th February. In view of this the Committee decided to defer consideration of the suspension until the outcome of the proceedings was known.

89. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - MATTER REGARDING THE HOLDER OF A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 14 and provided the Committee with the reasons which had necessitated 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 Police caution and explained the reasons why he felt that he should be granted a licence.

Having considered all of the facts put forward by the Licensing Assistant and the applicant, the Committee decided that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his application for a Hackney Carriage/Private Hire driver's licence should be granted.

90. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - APPLICATION FOR A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

With reference to agenda item No. 15 the Committee noted that an applicant for a dual Hackney Carriage/Private Hire driver's licence was not able to attend the meeting and it was therefore decided to defer consideration of the application until the next meeting.

91. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - APPLICATION FOR A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

With reference to agenda item No. 16 the Committee noted that an applicant for a dual Hackney Carriage/Private Hire driver's licence was not able to attend the meeting and it was therefore decided to defer consideration of the application until the next meeting.

92. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - APPLICATION FOR A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 17 and provided the Committee with the reasons which had necessitated 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 Police caution and explained the reasons why he felt that he should be granted a licence.

Having considered all of the facts put forward by the Licensing Assistant and the applicant, the Committee decided that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his application for a Hackney Carriage/Private Hire driver's licence should be granted.

93. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - APPLICATION FOR A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

The Acting Regulatory Services Manager referred to agenda item No. 18 and provided the Committee with the reasons which had necessitated 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 Police caution and explained the reasons why he felt that he should be granted a licence.

Having considered all of the facts put forward by the Licensing Assistant and the applicant, the Committee decided that the applicant was a fit and proper person under the meaning of the Local Government (Miscellaneous Provisions) Act 1976 and that his application for a Hackney Carriage/Private Hire driver's licence should be granted.

94. DUAL (HACKNEY CARRIAGE & PRIVATE HIRE) DRIVER'S LICENCE - APPLICATION FOR A DUAL DRIVER'S LICENCE - LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

With reference to agenda item No. 19 the Committee noted that an applicant for a dual Hackney Carriage/Private Hire driver's licence was not able to attend the meeting and it was therefore decided to defer consideration of the application until the next meeting.

The meeting ended at 4.30 pm

CHAIRMAN