

Minutes of the meeting of the **REGULATORY COMMITTEE** held at the Council Offices, Whitfield on Tuesday, 21 November 2017 at 10.08 am.

Present:

Chairman: Councillor B W Butcher

Councillors: B Gardner
S J Jones
P S Le Chevalier
D P Murphy

Officers: Contentious and Regulatory Lawyer
Public Protection Manager
Licensing Team Leader
Technical Support Officer - Licensing
Democratic Services Officer

11 APOLOGIES

There were no apologies for absence received from Members.

12 APPOINTMENT OF SUBSTITUTE MEMBERS

There were no substitute Members appointed.

13 DECLARATIONS OF INTEREST

There were no declarations of interest made by Members.

14 MINUTES

The Minutes of the meeting of the Committee held on 18 July 2017 were approved as a correct record and signed by the Chairman.

15 HIGHWAYS ACT 1980 - SECTION 115E - PORT OF CALL, MARKET SQUARE, DOVER

The Committee considered an application by Mr Robin Norris for a Street Furniture permit to allow the placement of 22 tables and 88 chairs at the front of the premises at the Port of Call, 18-19 Market Square, Dover. The application stated the furniture would be cast iron tables and chairs and would be placed between 10:00hrs to 22:00hrs every day between 1 April to 1 October. The applicant advised the tables and chairs were actually lightweight aluminium rather than cast iron as stated.

The application had been considered at a meeting of the Committee on 18 July 2017 but was deferred to the next meeting due to insufficient information and several questions from the Members going unanswered in the absence of the applicant. The next scheduled meeting in September had fallen inquorate and it was decided that as the application was to site the street furniture between 1 April and 1 October and it was unlikely that a meeting could be convened before 1 October, that with the agreement of the applicant, the application be deferred to the next scheduled meeting of the Committee on 21 November 2017.

The Licensing department had received reports that tables and chairs had been sited throughout the summer, and also on 2 November 2017, without the necessary permissions. The applicant advised that an area outside the premises (which could be identified in the photo in the agenda by different paving) did not require permission as it was within the boundary of the premises and not on the public highway and he believed that this was where seating had been seen. The Licensing Team Leader stated that furniture was in the area for which the permit was being sought. She also stated that she had spoken with the tenant (managing director) when the application notice was put up, and had told him that tables and chairs were out when there was no permit in place and they should not be.

In response the applicant advised the Committee that the premises and tenant were audited quarterly and no issues, and in particular with regard to the placing of furniture, had been identified. The tenant was an experienced bar manager from a food and beverage background and had previously been a Designated Premises Supervisor. The permission being sought was identical to the previous permission and it was possible that the auditor may not have known the permit had expired and therefore failed to notice the incorrectly placed furniture. The tenant of the premises had been advised by Mr Norris that the permit had lapsed and no tables and chairs were to be sited beyond that point and Mr Norris would investigate the matter with the tenant. Mr Norris was satisfied the premises was well run by the tenant and stressed that tenants, whilst required to fulfil obligations within their lease, were responsible for the day to day operation of the premises was their responsibility.

Members discussed the photos and diagrams provided and the proposed placing of the furniture. Members identified some inconsistencies in the diagrams and required clarification from the applicant as to the exact boundary, planter locations and the exact area being requested to permit. Members were concerned that there was insufficient room for the public to pass through safely and the implications of that as vehicles were able to access that area of the Market Square. The two representations received during the 28 day consultation also raised the same concerns.

Mr Norris concluded that the premises was a well-managed unit and had not received any complaints regarding the running of the business nor any issues identified within the quarterly audits. The area being requested for permission was identical to the previous permit and the withdrawal would have an effect on the business and the tenant would not want to proceed without the tables and chairs in place.

In accordance with the approved procedure the Committee requested the Contentious and Regulatory Lawyer and the Licensing Team Leader to retire with the Committee to assist in providing details of the previous permit and the siting of the tables and chairs in that permit. Upon returning it was

- RESOLVED: (a) That, having considered the application, the objections and the legal advice in relation to section 115E of the Highways Act 1980 and the Council's Procedure the Permit be REFUSED by reason that:
- (i) the Committee is not satisfied that the management process is robust enough to ensure compliance with a permit given the tenant was informed at the time of this application that no tables and chairs were permitted in the area of the application until the application was determined;
 - (ii) the committee is not satisfied that the current plan in the application clarifies what area is to be used and identifies insufficient area for pedestrians, wheelchair and pram users to pass through the area without obstruction.
- (b) The committee accept that the siting of tables and chairs would be a benefit to the business and community and would be a positive contribution for the area. Hence in the Committees view any future application should address the concerns in points (i) and (ii) and also consider who is in a position to ensure that any permit which may be granted is adhered to.

16 FEES AND CHARGES 2018/19

The Committee received the report of the Head of Regulatory Services which set out the fees and charges for 2018/19 relevant to the Regulatory Committee.

- RESOLVED: (a) That the Regulatory Committee approve the Fees and Charges for 2018/19 as set out in Appendix 4.
- (b) That Members approve the general principle that fees are set at an appropriate inclusive level, irrespective of VAT status, and that the VAT element within the overall fee level is then determined.
 - (c) That Members approve the general principle that, unless fee is set by statute, licensing fees will be set on a cost recovery basis.
 - (d) That the Head of Regulatory Services be authorised to adopt fees at, or close to government directed levels without the need for further reporting, in cases where the Council is awaiting Government guidance and it has not been possible to set a fee level at this stage.
 - (e) That the Head of Regulatory Services be authorised in consultation with the Director of Governance and the Director of Finance, Housing and Community to make minor adjustments to the fees and charges as necessary.

17 EXCLUSION OF THE PRESS AND PUBLIC

It was moved by Councillor P S Le Chevalier, duly seconded and

RESOLVED: That, under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the remainder of the business on the grounds that the items to be considered involved the likely disclosure of exempt information as defined in paragraph 1 of Part I of Schedule 12A of the Act.

18 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - APPLICATION FOR A DRIVER'S LICENCE

The Committee considered the report of the Licensing Team Leader on an application for a Joint Hackney Carriage and Private Hire Driver's Licence where an Enhanced Disclosure from the Disclosure and Barring Service (DBS) had shown previous convictions that were relevant to the decision as to the applicant's suitability as a fit and proper person to hold a licence to drive a taxi in the Dover District.

In accordance with the approved procedure Members offered the applicant the opportunity to present evidence concerning the circumstances surrounding the convictions.

The Committee withdrew to consider its decision and upon resuming the Contentious and Regulatory Lawyer explained that she had advised the Committee in relation to the Council's Policy guidelines and Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 in so far as they related to the applicant's suitability as a fit and proper person.

RESOLVED: That having regard to the evidence, the Committee considered that the applicant was a fit and proper person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 and that the application for a Joint Hackney Carriage and Private Hire Licence be granted for a period of 3 years.

19 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - APPLICATION FOR A DRIVER'S LICENCE

The Committee considered the report of the Licensing Team Leader on an application for a Joint Hackney Carriage and Private Hire Driver's Licence where an Enhanced Disclosure from the Disclosure and Barring Service (DBS) had shown previous convictions that were relevant to the decision as to the applicant's suitability as a fit and proper person to hold a licence to drive a taxi in the Dover District.

In accordance with the approved procedure Members offered the applicant the opportunity to present evidence concerning the circumstances surrounding the convictions.

The Committee withdrew to consider its decision and upon resuming the Contentious and Regulatory Lawyer explained that she had advised the Committee in relation to the Council's Policy guidelines and Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 in so far as they related to the applicant's suitability as a fit and proper person.

- RESOLVED: (a) That having regard to the evidence the Committee considered that the applicant was a fit and proper person in accordance with Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 and that the application for a Joint Hackney Carriage and Private Hire Licence be granted for an initial period of six months and
- (i) That the Licensing Team Leader will monitor and review the applicant's performance for the duration of this period and;
 - (ii) That providing there are no issues during the initial six months the licence will be granted for a further six months.

20 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - APPLICATION FOR A DRIVER'S LICENCE

The Committee considered the report of the Licensing Team Leader on an application for a Joint Hackney Carriage and Private Hire Driver's Licence where an Enhanced Disclosure from the Disclosure and Barring Service (DBS) had shown previous convictions that were relevant to the decision as to the applicant's suitability as a fit and proper person to hold a licence to drive a taxi in the Dover District.

In accordance with the approved procedure Members offered the applicant the opportunity to present evidence concerning the circumstances surrounding the convictions.

The Committee withdrew to consider its decision and upon resuming the Contentious and Regulatory Lawyer explained that she had advised the Committee in relation to the Council's Policy guidelines and Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 in so far as they related to the applicant's suitability as a fit and proper person.

- RESOLVED: That the application for a Joint Hackney Carriage and Private Hire Driver's Licence be refused on the basis that the applicant was not currently considered a fit and proper person to be granted a licence under Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.

21 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - APPLICATION FOR A DRIVER'S LICENCE

The Committee considered the report of the Licensing Team Leader on an application for a Joint Hackney Carriage and Private Hire Driver's Licence where an Enhanced Disclosure from the Disclosure and Barring Service (DBS) had shown previous convictions that were relevant to the decision as to the applicant's suitability as a fit and proper person to hold a licence to drive a taxi in the Dover District.

In accordance with the approved procedure Members offered the applicant the opportunity to present evidence concerning the circumstances surrounding the convictions.

The Committee withdrew to consider its decision and upon resuming the Contentious and Regulatory Lawyer explained that she had advised the Committee in relation to the Council's Policy guidelines and Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 in so far as they related to the applicant's suitability as a fit and proper person.

RESOLVED: That the application for a Joint Hackney Carriage and Private Hire Driver's Licence be refused on the basis that the applicant was not currently considered a fit and proper person to be granted a licence under Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 12.34 pm.