



Agenda

Licensing/Appeals Sub-Committee

Wednesday, 20 January 2016 at 10.00 am
Council Chamber - Town Hall

Membership (Quorum – 10)

Cllrs McCheyne, Newberry and Pound

Agenda Item	Item	Wards(s) Affected	Page No
1.	Appointment of Chair		
2.	Administrative Function Members are respectfully reminded that, in determining the matters listed below, they are exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter will be determined on the facts before the Sub-Committee and the rules of natural justice will apply.		
3.	Application for the Grant of an Operator's Licence - Local Government (Miscellaneous Provisions) Act 1982		5 - 14

Head of Paid Service

Town Hall
Brentwood, Essex
12.01.2016

Information for Members

Substitutes

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi- judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

Rights to Attend and Speak

Any Members may attend any Committee to which these procedure rules apply.

A Member who is not a member of the Committee may speak at the meeting. The Member may speak at the Chair's discretion, it being the expectation that a Member will be allowed to speak on a ward matter.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

Point of Order/ Personal explanation/ Point of Information

Point of Order

A member may raise a point of order at any time. The Chair will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Chair on the point of order will be final.

Personal Explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Chair on the admissibility of a personal explanation will be final.

Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Chair. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Chair gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Chair on the admissibility of a point of information or clarification will be final.

Information for Members of the Public

Access to Information and Meetings

You have the right to attend all meetings of the Council and Committees. You also have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published. Dates of the meetings are available at www.brentwood.gov.uk.

Webcasts

All of the Council's meetings are webcast, except where it is necessary for the items of business to be considered in private session (please see below).

If you are seated in the public area of the Council Chamber, it is likely that your image will be captured by the recording cameras and this will result in your image becoming part of the broadcast. This may infringe your Human Rights and if you wish to avoid this, you can sit in the upper public gallery of the Council Chamber.

Guidelines on filming, photography, recording and use of social media at council and committee meetings

The council welcomes the filming, photography, recording and use of social media at council and committee meetings as a means of reporting on its proceedings because it helps to make the council more transparent and accountable to its local communities.

Where members of the public use a laptop, tablet device, smart phone or similar devices to make recordings, these devices must be set to 'silent' mode to avoid interrupting proceedings of the council or committee.

If you wish to record the proceedings of a meeting and have any special requirements or are intending to bring in large equipment then please contact the Communications Team before the meeting.

The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.

The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of these activities, in their opinion, are disrupting proceedings at the meeting.

Private Session

Occasionally meetings will need to discuss some of its business in private. This can only happen on a limited range of issues, which are set by law. When a Committee does so, you will be asked to leave the meeting.

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Access

There is wheelchair access to the Town Hall from the Main Entrance. There is an induction loop in the Council Chamber.

Evacuation Procedures

Evacuate the building using the nearest available exit and congregate at the assembly point in the North Front Car Park.

20th January 2016

Licensing and Appeals Sub Committee

Application for the Grant of an Operator's Licence - Local Government (Miscellaneous Provisions) Act 1982

Report of: Gordon Glenday – Head of Planning, Borough Health, Safety & Localism

Wards Affected: All

This report is: Public

1. Executive Summary

- 1.1 Members are requested to determine an application for the grant of an Operator's licence to take bookings for a private hire vehicle within this borough. The applicant does not currently qualify under the Council's pre licensing conditions by virtue of not having held a licence to drive private hire vehicles for a period of 2 years or more.

2. Recommendation

2.1 The following options are open to Members;

- a) To grant the application subject to standard conditions
- b) To grant the application subject to standard conditions and any additional conditions as determined appropriate in the individual circumstances of the application
- c) To refuse the application.

3. Introduction and Background

- 3.1 The applicant, Mr. Alan Heggie runs a Company named 'The Flying B' and originally made an application for a Private Hire Operator's Licence to work in Brentwood on 2nd November 2015.
- 3.2 Private Hire Vehicle Operator's Licence Pre-Licensing Conditions state that the applicant shall have been licensed as a Private Hire or Hackney Carriage vehicle driver for at least two (2) years within Brentwood prior to his/her first application. A copy of the Pre-Licensing conditions is attached at **Appendix A**.

- 3.3 Mr. Heggie has never driven as a licensed driver within Brentwood and although he has made application to enable him to drive a licensed Hackney Carriage or Private Hire vehicle, he has not done so for the required 2 year period. This contravenes the pre-licensing condition and therefore, the application must be refused by officers.
- 3.4 Mr. Heggie has appealed the decision to refuse his application via e-mail, which was received on 9th November 2015. A copy of the email is attached at **Appendix B**.

4. Issues Options and Analysis of Options

- 4.1 The initial application was received on 2nd November 2015 from the owner of an existing Company, namely Alan Heggie, trading as 'The Flying B'. A copy of the application is attached as **Appendix C**.
- 4.2 It is the intention of Mr. Heggie that he would operate as an Operator/Driver Company based in Brentwood that would focus on a specialist clientele, e.g. large corporations, private jet rentals, Executive hire etc.
- 4.3 It is notable from the application that the vehicle being used by Mr Heggie is a Bentley. This is therefore, not a vehicle that would be used for every day private hire work as with a standard private hire operation.

5. Reasons for Recommendation

- 5.1 If granted, this applicant will be responsible for ensuring that he complies with the conditions and pre-conditions as laid out in 4.3 of this report, with the exception of any conditions that are relaxed by Members as a result of this application.
- 5.2 The nature of the business being operated by the applicant is such that it is not likely to raise any concern should the pre-licensing conditions be relaxed on this occasion. The nature of delegation however, is such that only a Sub Committee has the power to divert from pre-licensing requirements and conditions.
- 5.3 The matters for consideration are laid out in note 2 of the pre-conditions which states:
- 'All relevant information will be taken into account when consideration is given to an application for a Private Hire Vehicle Operator's Licence, and it may be that the standards and requirements are waived or amended or added to at the discretion of the Council'.*
- 5.4 There is a duty for each application to be considered on its own merits and this means that pre-licensing conditions are able to be diverted from if Members consider it appropriate to do so in the individual circumstances of the application.
- 5.5 One of the key considerations in determination of this application is whether the nature of the business that Mr Heggie wishes to operate is

such that Members do not consider there to be any relevance to applying the restriction in this case on the basis that this business is not a standard Private Hire business.

6. References to Corporate Plan

- 6.1 The proposals contained within this report link directly to the following priorities of the corporate plan:

A prosperous Borough – “Safeguarding public safety through a risk based regulation and licensing service.”

Street Scene and Environment – “Develop effective partnership arrangements so all issues affecting neighbourhoods are delivered in a timely and efficient way”

7. Legal Implications

- 7.1 Members are asked to consider the individual merits of the application with regard to the pre-licensing conditions and any testimony from the applicant. Due to the hearing’s requirements and the right of the applicant to have the application determined on merit and without bias no recommendations can be made. The available options in respect of this application are highlighted in paragraph 1 of this report.
- 7.2 If granted, any future applications by Mr Heggie for renewal of his licence would be granted under delegated powers provided that there were no concerns evidenced in relation to the operation of the business.
- 7.3 There is a right of appeal in relation to determination in respect of this application to the Magistrates Court.

Report writer details:

Keith Alexander – Licensing Officer
Email: keith.alexander@brentwood.gov.uk
Tel: 01277 312642

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**PRIVATE HIRE VEHICLE OPERATOR'S LICENCE
PRE-LICENSING CONDITIONS**

- 1.0 In order that a satisfactory and reliable private hire vehicle service is provided in the Borough, a person being considered for a Private Hire Vehicle Operator's Licence shall:
- 1.1 have been a full time licensed Private Hire Vehicle Driver or Hackney Carriage Driver within the Borough for not less than TWO years immediately preceding the first application.
 - 1.2 be a person who would not be refused a Private Hire Vehicle Driver's Licence or a Hackney Carriage Driver's Licence by virtue of any caution or conviction contained in the Pre-Licensing Conditions for such licences.
 - 1.3 satisfactorily complete an application form on which must be shown all cautions and convictions recorded against him except those which are spent by operation of the Rehabilitation of Offenders Act 1974.
 - 1.4 in the case of first application only, produce two written references as to character from persons to whom the applicant shall have been recently known for a minimum period of TWO years. (See Note 1).

NOTE 1 References from relations of the applicant will not be accepted as suitable.

NOTE 2 All relevant information will be taken into account when consideration is given to an application for a Private Hire Vehicle Operator's Licence, and it may be that the standards and requirements are waived or amended or added to at the discretion of the Council.

NOTE 3 A licence will not be issued in the name of a company or partnership if any officer of that company or member of that partnership would be refused a licence to drive a Private Hire Vehicle or Hackney Carriage by reason of convictions recorded against him.

NOTE 4 Where a Private Hire Vehicle Operator's Licence is granted, the Local Planning Authority will be advised accordingly.

SCHEDULE 1 - INTERPRETATION

In these Conditions

"Council" means "Brentwood Borough Council".

"Borough" means "Brentwood Borough Council Administrative Area".

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Appendix B

From: Alan Heggie
Sent: 22 December 2015 22:07
To: Keith Alexander
Subject: Fwd: Operator License Application Number PHO 102959

Hi Keith

Further to our telephone conversation and your subsequent email, please find below the email I sent regarding my appeal.

You suggested the committee might be meeting on the 14th of January. As I already have a booking on the 14th at 12 noon in Weybridge in Surrey would it be possible for the meeting to be at 9.00 so I could leave at 10.00 to get to Surrey in time? Or, could the meeting be on the 15th? If necessary I could cancel my booking and the British Chauffeurs Guild will allocate another chauffeur.

Should you require any further information please do not hesitate to contact me.

I look forward to hearing from you in due course. In the meantime have a wonderful Christmas.

Best wishes

Alan

----- Forwarded message -----

From: Alan Heggie

Date: 9 November 2015 at 09:28

Subject: Operator License Application Number PHO 102959

To: licensing@brentwood.gov.uk

Dear Sirs,

Further to my application for an Operators License, application number PHO 102059, I wish to appeal item 1.1 of the Pre-Licensing Conditions.

I have not been working for 2 years within Brentwood Borough although I have applied for my Private Hire Drivers License (and paid the necessary fees). I have however been a qualified Security Chauffeur with the British Chauffeurs Guild since 1997 and have been working for the British Chauffeurs Guild in my spare time whilst my main job was in the hospitality industry. During my time with the British Chauffeurs Guild I have chauffeured for wealthy businessmen, diplomats and more recently people attending venues such as Ascot, The Millennium Stadium,

Twickenham, The Queen Elizabeth Stadium and Frogmore Hall (part of the Crown Estate at Windsor Castle)

My partner and I decided at the beginning of this year that we wanted to start a new top end, professional chauffeur business. We moved from Surrey to Essex for personal reasons and decided to make a fresh start with the new business. The company is called The Flying B (named after the emblem on the front of a Bentley) and will only consist of myself in full uniform driving a Bentley Arnage T. The Flying B is not a company for local trips to the station, library etc.. The clients we are looking to work for are large corporations, private airfields, 4 & 5 star hotels, spas, private jet rentals, smaller corporates looking to impress their clients and people attending special events.

I hope that once you have read this email you will be in a position to look favourably on my appeal.

I look forward to hearing from you in due course.

Best wishes

Alan Heggie

Click [here](#) to report this email as spam.

2.30 pm 19/11/15.

Received 02/11/15
Appendix C

Reference: TLD101636

Combined Hackney Carriage & Private Hire Vehicle Driver's Licence

Personal Details

Title:* Mr
 First Name:* Alan
 Middle Name(s):
 Surname:* Heggie
 Address
 Flat Number (if any)
 House / Building Name or Number*
 Road Name*
 Town
 County
 Post Code*
 Telephone - Home: *
 Telephone - Work:
 Telephone - Mobile:
 Email:* alan.heggie@googlemail.com
 (Providing your email address will help us to reduce the length of time taken to process your application)
 DVLA Driving Licence Number (e.g. SMITH710250JR9HK 76):* [REDACTED]

Terms & Conditions

It is your responsibility to ensure that you comply at all times with the Licence and Pre-Licensing Conditions set by the Council. If in any doubt, you are strongly advised to contact the Licensing Team as this may invalidate or delay your application. In some cases it may mean that you do not qualify to hold a licence. In particular, please confirm the following:

- I am over 21 years of age
- I have held a full DVLA (or EU equivalent) driving licence for a minimum of 3 years
- I have not been disqualified from driving at any time in the last 2 years
- I do not have more than 8 penalty points on my DVLA (or EU equivalent) driving licence
- I have not had any cautions or convictions involving dishonesty within the last 3 years

If you are unable to confirm any one of the above, please contact the Licensing Team before you proceed with your application.

- I confirm I have read the Combined Hackney Carriage & Private Hire Vehicle Driver's Pre-Licensing Conditions.
- I confirm I have read the Combined Hackney Carriage & Private Hire Vehicle Driver's Licence Conditions.

Declaration

In accordance with the provisions of the Local Government (Miscellaneous Provisions) Act 1976, I apply for a combined licence to drive a Hackney Carriage and Private Hire Vehicle within the Brentwood Borough Area.

I declare that the answers I give to the questions in this application are true, to the best of my knowledge and belief, and acknowledge that, if there are any omissions or incorrect statements, this may result in the application being refused or, if a licence has been issued, it may be liable to suspension.

I have read the necessary conditions related to this application, I understand that the Head of Environmental Health & Licensing may deem it necessary to cause further enquiries to be made to ensure that an applicant is a fit and proper person to hold a Hackney Carriage and Private Hire Vehicle Driver's Licence.

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Members Interests

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

- **What are pecuniary interests?**

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

- **Do I have any disclosable pecuniary interests?**

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

- **What does having a disclosable pecuniary interest stop me doing?**

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not :

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

- **Other Pecuniary Interests**

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

- **Non-Pecuniary Interests**

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a non-pecuniary interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

Licensing Sub-Committees

To hear and determine applications that do not sit within the scope of delegation to officers, usually where representations have been received either by a third party against grant of a license, or from the applicant against intended refusal or revocation of a license/registration.

The Planning and Licensing Committee has delegated all functions other than relevant policies and fees setting to officers, with the exception of those other matters as indicated below, which are heard by licensing sub-committee unless otherwise indicated:

Licensing Act 2003 and Gambling Act 2005

- (a) Determination of any application type where a representation has been received in accordance with the legislation.
- (b) Determination of applications for review or expedited review.

Hackney Carriage vehicles and drivers (including enforcement of ranks) and Private Hire vehicles, drivers and operators, with the exception of:

- (a) Suspension or revocation of drivers' licenses (save for initial suspension under provision of Local Government (Miscellaneous Provisions) Act 1976 S61 (2B) if it appears that the interests of public safety require the suspension to have immediate effect).
- (b) Where representation has been submitted by the applicant/license holder against refusal of any application.
- (c) Where representation has been received from an applicant to vary a licensing or pre-licensing condition.

Scrap Metal Dealing

- (a) Determination of applications where representations have been received against refusal in accordance with legislative requirements; and
- (b) Consideration of revocation of a license where representations have been received in accordance with legislative requirements.

Street Collections and House to House Collections

- (a) Appeals against refusal to grant or renew a license

Licensing of sex establishments

- (a) Determination of all applications, revocations and appeals.

Street Trading

- (a) Determination of applications where representation(s) has been received.
- (b) Determination of applications that fall outside of current policy.
- (c) Determination of matters relating to revocation of a license.

Acupuncture, Tattooing, Skin and Ear Piercing and Electrolysis

- (a) Appeals against refusal to grant or renew a registration.
- (b) Revocation of a registration.

Animal Welfare and Security, except for the following:

- (a) Appeals against refusal to grant or renew a license.
- (b) Revocation of a license.

Exercise of Powers under Caravan Sites and Control of Development Act 1960, except for:

- (a) Refusal and revocation of licenses, (other than urgent refusals which are delegated to officers).

Mobile Homes

- (a) Appeals against revocation of a license and/or conditions attached to the grant of a license.