

Minutes

Licensing/Appeals Sub-Committee Thursday, 24th September, 2015

Attendance

Cllr Newberry
Cllr Reed

Cllr Wiles

Officers Present

Dave Leonard	- Licensing Officer
Karen O'Shea	- Governance and Member Support Officer
Adam Rulewski	- Barrister – BDT Legal
Jean Sharp	- Governance and Member Support Officer

163. Appointment of Chair

Councillor Newberry was appointed Chair of the Sub Committee.

164. Administrative Function

Members were respectfully reminded that, in determining the matter listed under Minute 166 they were exercising an administrative function with the civil burden of proof, that the matter would be determined on the facts before the Sub-Committee and the rules of natural justice applied.

165. Declarations of Interest

No declarations of interest were made, however, Cllr Reed advised that he was a personal license holder on behalf of Brentwood Theatre.

166. Licensing Act 2003 - Application for Premises Licence: McColls - 4 The Keys, Eagle Way, Great Warley, Brentwood, CM13 3BP

The report before Members provided information relating to the application for a premises license at McColls, 4 The Keys, Eagle Way, Great Warley CM13 3BP.

The Licensing Act 2003 established a single integrated scheme for licensing premises used for the supply of alcohol, regulated entertainment or provision of late night refreshment.

The purpose of the licensing system was the promotion of four licensing objectives:

- Prevention of crime and disorder
- Prevention of public nuisance
- Public safety
- Protection of children from harm

The sub committee took those objectives into account in determining the matters before it together with the following:

- Guidance Notes on the Conduct of Hearings before the Licensing /Appeals Committee
- Brentwood Borough Council's Statement of Licensing Policy
- The statutory guidance issued by the Secretary of state under Section 182 of the Licensing Act 2003.

The application for a premises licence was received on 5 August 2015 in respect of McColls, 4 The Keys, Eagle Way, Great Warley Brentwood CM13 3BP and was put before Members.

The premises was a newsagents and general convenience store and the application was for a premises license for the provision of the sale of alcohol for the following hours; 06:00hrs-2300hrs daily.

The application had been advertised in accordance with the Licensing Act 2003 regulations.

One valid representation had been made which related to a number of serious assaults that been carried out on staff in the past and a concern that granting a licence to sell alcohol may exacerbate the situation and put staff and customers at risk.

The sub committee was addressed by the applicant. There was no objector present at the meeting.

The applicant advised that the additional financial turnover following the purchase of the goodwill and stock from the neighbouring off licence would allow for two members of staff to be on the premises at all times.

The applicant also confirmed the store manager had now obtained a personal license and was the Designated Premises Supervisor.

The sub-committee considered the reports presented to it and the representation for and against the application. Upon consideration, the sub-committee

RESOLVED UNANIMOUSLY

to grant the application as applied for with the following amendment to the agreed conditions set out in full below.

That two members of staff shall be on the premises at all times during which the premises license permits the applicant to carry out licensable activities.

Members took the view that the above additional condition was necessary in order to meet the licensing objectives.

In addition to the above condition and as outlined in 5.1 of the report, the applicant had after consultation with the Police stated that:

- The premises shall have sufficient cameras located within the premises to cover all public areas including the entrance and exit and where the sale of alcohol take place.
- The CCTV system must be operating at all times whilst the premises are open for licensable activity. All equipment shall have a constant and accurate time and date generation. All recorded footage must be securely retained for a minimum of 28 days.
- The manager, supervisor and DPS will be trained in the use of the CCTV system and can play the CCTV recordings on the system at the premises upon reasonable request (meaning within 48 hours of the request).
- The downloaded images must be in a viewable format on either disc or VHS. Footage supplied in a digital format on CD or DVD will also have a copy of the CCTV system software enabled on the disc to allow playback.
- Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.
- A till prompt system will be in operation at the store and used for the refusal of all age restricted products.
- An electronic refusal log will be operated and maintained and will be produced to a relevant officer of the Police or other relevant officers of a responsible authority upon reasonable request.
- A Challenge 25 policy will be operated at the premises: forms of identification that will be accepted are;
 - a) A Valid Passport
 - b) Photo card Driving Licence
 - c) 'PASS' accredited identification card.
- The licence holder shall display prominent signage confirming the company's Challenge 25 policy.
- Spirits will be located behind the counter

All of the recommendations listed in 5.1 of the report of the report (set out above) and the amendment made at the hearing would be converted into conditions on the license granted.

All parties were reminded that they had a right to appeal to the Magistrates' Court.

Minutes

Licensing/Appeals Sub-Committee Monday, 16th November, 2015

Attendance

Cllr McCheyne
Cllr Newberry

Cllr Wiles

Officers Present

Gary O'Shea - Principal Licensing Officer
Jean Sharp - Governance and Member Support Officer
Adam Rulewski - Barrister, BDT Legal

221. Appointment of Chair

Members resolved to appoint Cllr McCheyne to chair this meeting of the Sub-Committee.

222. Administrative Function

Members were respectfully reminded that, in determining the matters under consideration, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matters were determined on the facts before the Sub-Committee and the rules of natural justice applied.

223. Application for the Grant of a Street Trading Licence - Local Government (Miscellaneous Provisions) Act 1982

Members were requested to determine an application for the grant of a Street Trading licence in respect of an E-Cigarette and Vaping supplies stall to permit it to trade at the Essex Farmers Market in the High Street Brentwood, weekly on both Friday and Saturday.

Brentwood Borough Council had adopted schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to designate Brentwood High Street from Wilsons Corner to its junction with Kings Road and Weald

Road as a 'licence' Street for the purpose of Street Trading. This meant that no trading might take place otherwise than in accordance with an authorisation from the Council.

This application had been submitted by Mr Matthew Connolly. Originally, a licence was granted under delegated authority and Mr Connolly traded for a total of 4 trading days until concern was raised that the content of the stall might fall outside of the Council's current Street Trading and Market Policy. Mr Connolly immediately ceased trading pending determination of his application.

The Sub-committee heard from the applicant who confirmed that he traded from an online shop and in other markets. He purchased the e-cigarette products themselves from a wholesaler in the UK, and all parts could be fully traced. In terms of the e-cigarette liquid, this was compiled at home by the applicant, by mixing together the various ingredients which he had purchased. The ingredients themselves were pre-produced, and his role was simply to mix them into an appropriate formula. He confirmed he had no formal qualifications in this respect, and that he was acting entirely in accordance with the law. The applicant confirmed that he had full public and product liability in respect of these products.

Officers confirmed that no complaints had been received in respect of the applicant's stall.

The Sub-committee had some concerns in respect of the mixing of the formula at home without qualification, but took into account the applicant's description of the simple process and noted that this was entirely legal.

The Sub-committee RESOLVED UNANIMOUSLY to grant the street trading license, but on condition that the applicant provided to the local authority copies of his Public and Product Liability Insurance, and subject to the Sub-committee being satisfied that these policies adequately covered him for sales of these products from his market stall.

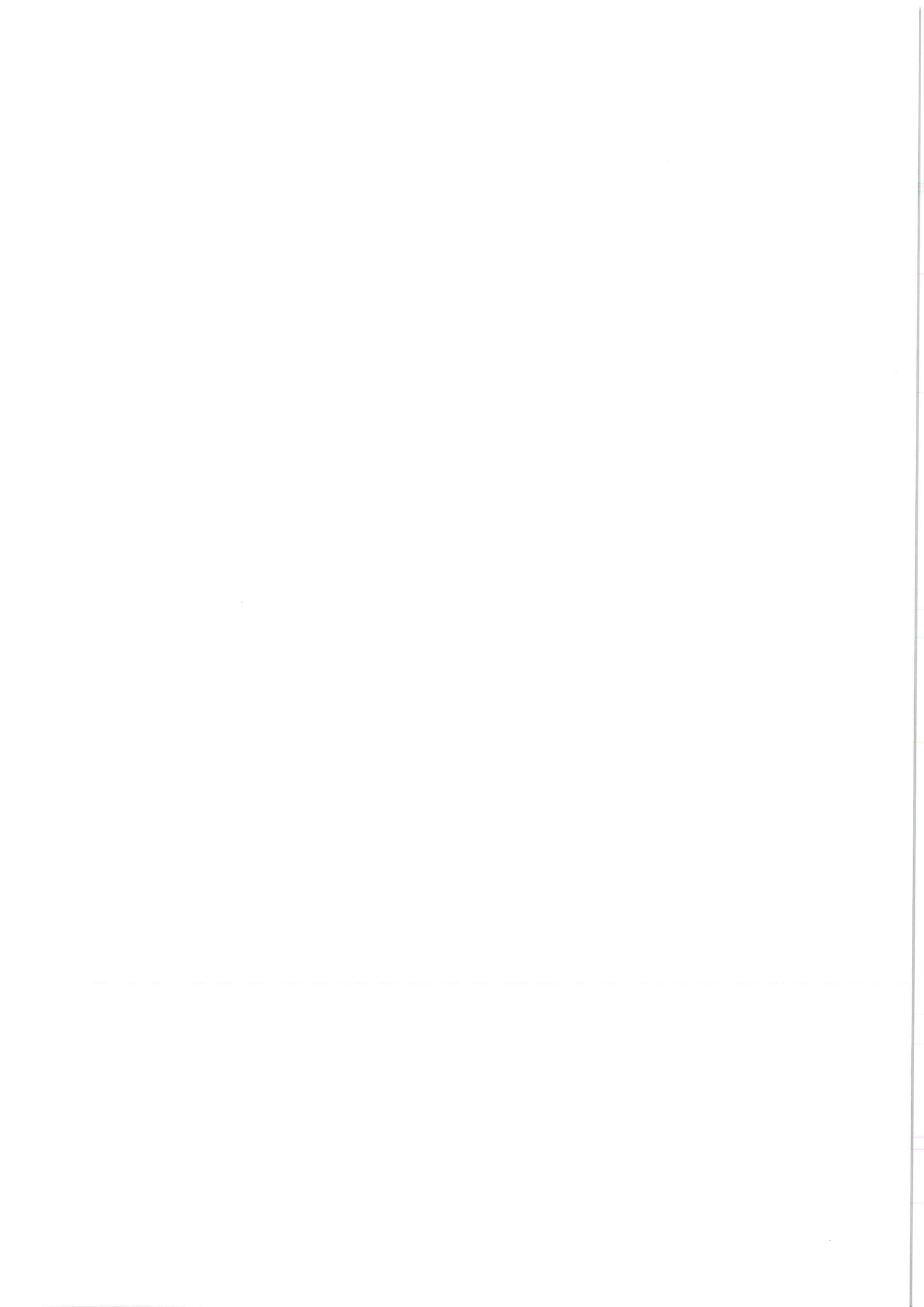
224. Consideration of the Suspension or Revocation of a Hackney Carriage/Private Hire Driver's Licence (Exempt Information, Paragraph 4 of Part 1 of 12A of the Local Government Act 1972).

Members were requested to consider information contained in the confidential report before them relating to an incident which had given rise to concern over whether a dual Hackney Carriage and Private Hire license holder remained a 'fit and proper' person to hold the license and having considered the information to determine whether it should be suspended, revoked or remain in force.

The incident involved the applicant's vehicle being seen to be driving away with a pedestrian hanging onto the vehicle for some 100 yards before falling

to the ground. The Sub-committee had reviewed the footage and noted the comments from the Police that they had no concerns about the applicant. The applicant provided a full and honest account of the incident and the Sub-committee noted that he had an unblemished driving license and unblemished record with the Council.

Taking all of these matters into consideration, the Sub-committee was of the view that the applicant was clearly a fit and proper person to hold a license. In the present situation, the Sub-committee considered him to be nothing more than victim of circumstances and no blame could be attached to him for what happened and it was RESOLVED UNANIMOUSLY that the applicant should therefore continue to operate under his license.



Minutes

Licensing/Appeals Sub-Committee Tuesday, 8th December, 2015

Attendance

Cllr Murphy
Cllr Newberry

Cllr Pound

Officers Present

Gary O'Shea - Principal Licensing Officer
Jean Sharp - Governance and Member Support Officer
Chris Pickering - Principal Solicitor

259. Appointment of Chair

Members resolved that Cllr Newberry should chair this meeting of the Sub-committee.

260. Administrative Function

Members were respectfully reminded that, in determining the matters under consideration, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matters were determined on the facts before the Sub-Committee and the rules of natural justice applied.

261. Consideration of matters under the Street Trading and Market Policy

Brentwood Borough Council had adopted schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 to designate Brentwood High Street from Wilsons Corner to its junction with Kings Road and Weald Road as a 'licence' Street for the purpose of Street Trading. This meant that no trading might take place otherwise than in accordance with an authorisation from the Council and the Council's Street Trading and Market Policy.

The report before Members sought clarification on a matter pertaining to the Council's Street Trading and Market Policy; in the first instance seeking clarification on a matter of policy pertaining to one particular product type and in the second instance to identify whether clothing might be sold by a trader and if so, whether this should be restricted or conditioned in any way.

Members were advised that Jacky's Boutique was a longstanding trader on

the High Street market, having operated on a Saturday for some approximately three years and on a Friday, since Friday trading commenced approximately one year ago.

Jacky's Boutique sold ladies and children's clothing and had been permitted to do so by adopting a broad interpretation of Schedule 4 of the Act and the Council's policy. This was because it had been the belief of Officers that a literal interpretation of these provisions would disallow clothing of any nature to be sold on the basis that there were already many outlets in and around the vicinity that stocked and sold clothes. Instead, a purposive view had been taken to permit clothing provided that it was not the same or distinctly similar to clothing sold elsewhere.

It should be noted that whilst Jacky's Boutique had been told that they could not duplicate stock, this had not to date been put in writing and only verbal guidance had been given.

The Sub-Committee considered in detail the submissions by all parties and had sympathy for the arguments presented on both sides. They restricted their consideration to the published policy and the stated intention of the market. In the Sub-Committee's view, this policy needed to be reconsidered by the Planning and Licensing Committee as it had not been amended since it was introduced.

The Sub-Committee considered issues submitted under the Competition Act, but did not accept them. Any specification in the policy of what could and could not be sold would necessarily restrict market stalls. Paragraph 5.4 of the policy restricted what could be sold and included excluding all cut flowers for example.

The stated intention of the market was to provide an alternative to the High Street with niche products on offer. There would always be some degree of duplication from market stalls to shops but it was reasonable for the Council to set out appropriate conditions that were fair to all, however.

The Sub-Committee recommended that the policy should be reviewed by the Planning and Licensing Committee as soon as possible so that a certain and fair policy was in place. In dealing with the issues before the Sub-committee, and in considering the policy and a fair interpretation of it in light of the stated purpose of the market and the wording of the policy, the Sub-Committee **RESOLVED**, with immediate effect, pursuant to para 2.1 (a)(ii) of the report, that while clothing may be sold by Jacky's Boutique, it should not be of a nature that is the same or distinctly similar to other stalls or shops. The implication of this decision should be with the assistance and cooperation of the Council's licensing department.

Minutes

Licensing/Appeals Sub-Committee Wednesday, 20th January, 2016 10.00am

Attendance

Cllr McCheyne (Chair)
Cllr Newberry

Cllr Pound

Officers Present

Keith Alexander	- Licensing Officer
Gary O'Shea	- Principal Licensing Officer
Jean Sharp	- Governance and Member Support Officer
Chris Pickering	- Principal Solicitor

309. Appointment of Chair

Members resolved that Cllr McCheyne should chair this meeting of the sub-committee.

310. Administrative Function

Members were respectfully reminded that, in determining the matters under consideration, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matters were determined on the facts before the Sub-Committee and the rules of natural justice applied.

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

Members were requested to determine an application for the grant of an Operator's Licence to take bookings for a private hire vehicle within the borough. The applicant did 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.

The applicant, Mr Heggie, originally made an application for a Private Hire Operator's Licence to work in Brentwood on 2 November 2015.

Private Hire Vehicle Operator's Licence Pre-Licensing Conditions stated that the applicant should have been licensed as a Private Hire or Hackney Carriage vehicle driver for at least two years within Brentwood prior to their first application.

The applicant had never driven as a licensed driver within Brentwood and although he had made application to enable him to drive a licensed Hackney Carriage or Private Hire vehicle, he had not done so for the required 2 year period. This contravened the pre-licensing condition and therefore, the application had to be refused by officers. Mr. Heggie had appealed the decision to refuse his application.

It was his intention that he would operate as an Operator/Driver Company based in Brentwood which would focus on a specialist clientele, e.g. large corporations, private jet rentals, executive hire etc. The application indicated that the vehicle being used by Mr Heggie was a Bentley which was not a vehicle that would be used for every day private hire work as with a standard private hire operation.

If the Licence was granted, the applicant would be responsible for ensuring that he complied with the conditions and pre-conditions as laid out in paragraph 4.3 of the report, with the exception of any conditions that were relaxed by Members as a result of the application.

The nature of the business being operated by the applicant was such that it was not likely to raise any concern should the pre-licensing conditions be relaxed on this occasion. The nature of delegation however, was such that only a Sub-committee had the power to divert from pre-licensing requirements and conditions.

The matters for consideration were set out in note 2 of the pre-conditions which stated:

'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'.

There was a duty for each application to be considered on its own merits and this meant that pre-licensing conditions were able to be diverted from if Members considered it appropriate to do so in the individual circumstances of the application.

One of the key considerations in determination of this application was whether the nature of the business that Mr Heggie wished to operate was such that Members did not consider there to be any relevance to applying the restriction

in this case on the basis that this business was not a standard Private Hire business.

The Sub-committee considered the matter and decided to exercise its discretion to deviate from the Council's policy and **RESOLVED** to grant the application for a Private Hire Operator's Licence as applied for.

The meeting ended at 10.20am
