

Item 4

Time Commenced: 6:00pm
Adjourned: 6:23pm
Reconvened: 6.25pm
Time Finished: 6.45pm

LICENSING COMMITTEE 07 November 2019

Present: Councillor A Holmes (Chair)
Councillors Atwal, Barker, Bettany, Cooper, A J Graves, Hussain,
Peatfield, A Pegg, Potter, Repton, Sandhu and Skelton

In Attendance: Olu Idowu – Head of Legal Services
Mike Kay – Head of Environmental Health and Licensing
Emily Feenan – Monitoring Officer
Richard Antcliff – Director of Public Protection and Streetpride
Rachel North – Strategic Director of Communities and Place

12/19 Apologies

Apologies were received from Cllrs Smale and Marshall

13/19 Late Items to be Introduced by the Chair

The Chair advised the Committee that legal advice had been received in relation to the decision taken, at the meeting on 22 August 2019, to approve the Taxi and Private Hire Vehicle Strategy. The Chair stated that in light of this additional advice, she had agreed to the circulation of a late report, under the provisions of Section 100B(4) of the Local Government Act 1972.

The report invited the Monitoring Officer to address the Committee to provide a summary of the legal advice received, and for the Committee to determine appropriate next steps.

The reason for urgency was that, following the advice received from Counsel, it was necessary for the Monitoring Officer to brief members of the Licensing Committee. Those briefings concluded on 6 November and further advice had been sought from Counsel earlier on 7 November in relation to questions that were raised. The Chair stated that she intended for this matter to be taken immediately, following the next item of business.

14/19 Declarations of Interest

There were no declarations of interest

15/19 Late Item – Update on proposed final taxi and private hire vehicles strategy 2020

The Chair introduced the late item, which was to allow the Monitoring Officer to address the committee to provide a summary of legal advice received in relation to Committee's decision to approve the Taxi and Private Hire Vehicle Strategy (see minute 10/19 at Appendix 1) at their meeting on 22 August 2019.

Cllr Hussain raised an objection to accepting the late item stating that he felt an item of this importance, which had significant implications, should not be taken as late item and that all members of the Committee should have time to consider the matter. Councillor Hussain added that the strategy would not take effect until 2021 and therefore he could not see the rationale for this to be brought as an urgent late item and proposed that the late item be rejected.

The Head of Legal Services confirmed that the decision to take a late item was at the discretion of the Chair and that the Chair was inviting the Committee to take legal advice from the Monitoring Officer on what was considered to be a matter of urgency.

The Monitoring Officer then addressed the Committee stating that following the meeting of Committee on 22 August, the Director of Public Protection and Streetpride wrote to each Group Leader, setting out his concerns regarding the implications of the decisions made by the Committee at that meeting. Subsequently Councillor Eldret replied to that letter, writing on behalf of the Labour Group members of Committee and setting out in detail the rationale behind the decisions made by the Labour Group members on 22 August. The content of Councillor Eldret's letter was published in the Derby Telegraph and some of the content of that letter raised some concerns.

The Monitoring Officer stated she then decided to seek independent legal advice from Counsel on the matter. Mr Ben Williams, a specialist licensing barrister at Kings Chambers was instructed to advise as to whether, given the content of Councillor Eldret's letter, the decisions made on 22 August were now vulnerable to a successful legal challenge. Counsel advised that the letter did give the impression that the Labour Group councillors entered Committee with a predetermined agenda on behalf of the trade.

The Monitoring Officer reported that Counsel was particularly concerned with the content of the second paragraph of the letter which read: “we are surprised to receive a letter challenging the political decisions made by the majority of

Licensing Committee members”. Counsel advised that this statement was an expression of an erroneous and impermissible viewpoint. Whilst the decision-makers at Committee are politicians, the decision was not and ought not to have been a political one. The Monitoring Officer informed the Committee that she had listened to the counter argument of the Labour Group that the use of the word “political” was not intended to refer to the nature of the decision but to the fact that the decision was made by politicians. However, Counsel considered this argument and firmly advised that the issue was one of perception, stating it did not matter what was intended by the use of that word, the fact is that a reasonably held perception of bias arises out of the use of it in this context.

The Monitoring Officer stressed that in giving this advice, she was not accusing any Member of being biased or pre-determining the decision; the issue was one of perception, especially given the publication of the letter in the Derby Telegraph.

The Monitoring Officer informed the Committee that Counsel had advised that the effect of this was that the decision of 22 August was now vulnerable to a successful judicial review challenge which could manifest at any time. Counsel further advised that, in his view, if challenged the decision would be found to be unlawful on the basis of bias and predetermination. In the event of a challenge the High Court would quash the decision and direct that a new decision be taken by Committee.

The Monitoring Officer stated that given this advice from Counsel, she was advising Committee that they should now take steps to rectify this issue. The strong advice provided to the Committee was that they should rescind the decision of 22 August and hear the matter afresh. The Monitoring Officer warned the Committee that if they did not take such steps, the 22 August decision would remain highly susceptible to a successful judicial review challenge and the Council would be forced to move forward with a policy based on an unlawful decision.

All Members of Licensing Committee were then invited to vote on whether to rescind the decision made on 22 August and reconvene at a future date to discuss, reconsider the decision and vote afresh. The Monitoring Office also reminded all committee members of their obligations under section 7.1 of the Councillor Code of Conduct.

The Chair then moved to a motion, under the provisions of CP66, to rescind a previous decision. It was advised that this would require the support of a third of the members of the committee to move. Councillors A Pegg, Cooper, Barker and Potter voted in favour of the motion of the Chair, and the matter was debated.

Councillor Peatfield requested to respond to the issue of the Labour Group's letter referred to by the Monitoring Officer, categorically stating that no Labour Group discussions had been held prior to the meeting on 22 August, no predetermined decision had been made, no meetings had been held with the trade and in no way had any member of the Labour party compromised themselves

The Chair then moved to the vote on whether to rescind all resolutions under minute 10/19. The majority of members voted not to rescind, therefore the motion was lost.

Under CP72, Councillors Cooper, Barker, A Pegg, Potter and A Holmes requested that their votes were recorded in the minutes, all of whom voted in favour of the motion to rescind.

Resolved that the decision, relating to the Taxi and Private Hire Vehicles Strategy 2020, made at the Licensing Committee on 22 August 2019, was upheld.

A short adjournment was called, before the meeting reconvened to consider the following items of business.

16/19 Minutes of the Meetings held on 22 August 2019

The minutes of the meeting held on 22 August 2019 were confirmed as an accurate record.

17/19 Review of Cumulative Impact Policy 2019

The Committee considered a report from the Director of Public Protection and Streetpride. The report stated that the Council is legally obliged to review its Cumulative Impact Policy, which forms part of the Council's Licensing Policy, every three years. The report contained evidence, of a need for a Cumulative Impact Zone, with recent data provided by Derbyshire Constabulary. The Head of Environmental Health and Licensing briefed the Committee on the revised boarder of the Cumulative Impact Zone.

Resolved to:

- 1. Note the information set out in the report and appendices.**
- 2. Approve the retention of the Cumulative Impact Policy within the Council's Licensing Policy.**
- 3. Approve the revised draft Cumulative Impact Policy as detailed in Appendix 3 of the report.**

18/19 Review of Licensing Policy 2019

The Committee considered a report from the Director of Public Protection and Streetpride outlining Derby City Council's obligation, as the designated Licensing Authority, under the Licensing Act 2003, to produce a Licensing Policy. This Policy detailed how Derby City Council will exercise its functions under the Licensing Act. The Committee were informed that the Policy must be reviewed at

least every five years.

Resolved to approve the process of consultation on a revised Licensing Policy.

19/19 Update Review of the Penalty Point Scheme

The Committee considered a report from the Director of Public Protection and Streetpride providing an update review of the taxi licensing penalty point scheme. The Committee discussed the information and figures provided in the report and appendices.

Resolved to note the information set out in the report and appendices

MINUTES END