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BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 24 April 2013 at 10.00 am in
Norfolk Room, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mrs L.H. Monument (Chairman)	Mr S. Askew
Mr W. R. J. Richmond (Vice- Chairman)	Mr R.W. Duffield
Mrs S Armes	Mrs J A North

In Attendance

Rowland Wilson	- Licensing Officer
Mr Philip Mason	- Solicitor
Julie Britton	- Senior Committee Officer
Fiona Inston	- Licensing & Business Support Manager
Peter Rudling	- Peter Rudling Travel

55/13 MINUTES (AGENDA ITEM 1)

(1) Application for Consent to Place Tables and Chairs on the Highway (Minute No. 53/12)

- a) Fourth paragraph on page 2 of the agenda to add the following wording to the last sentence to read: "The Area Manager stated that customers would not be allowed to move them. *This would be controlled by appropriately trained staff*".
- b) Typographical amendment to be made at the end of the first paragraph on page 3 of the agenda to read 'metres' and not meters.
- c) Referring to the penultimate paragraph on page 3 of the agenda (prior to the resolution), it was noted that the Objector did not return to the meeting following consideration of the matter.

(2) Minutes

Subject to the amendments above the Minutes of the Appeals Committee meeting held on 28 November 2012 were confirmed as a correct record and signed by the Chairman.

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56/13 APOLOGIES (AGENDA ITEM 2)

None.

57/13 URGENT BUSINESS (AGENDA ITEM 3)

Although not classed as urgent business, the Chairman announced that Phil Mason, the Acting Solicitor for the Appeals Committee, was retiring at the end of April. She thanked him for his assistance over the past few years and said that he had been a pleasure to work with and wished him well in his retirement.

Mr Mason said that he had enjoyed his role on behalf of the Council and highlighted the fact that not one of the decisions made by the Committee had been overturned.

58/13 REQUEST FOR EXEMPTION TO DISPLAYING AN EXTERNAL PLATE ON A LICENSED VEHICLE (AGENDA ITEM 6)

This item was discussed following agenda item 7.

The Licensing Officer presented the report that had been a result of a letter sent by Mr Rudling of Peter Rudling Travel who had asked for the requirement of displaying an identification plate on the rear of a private hire vehicle to be exempt.

The current Private Hire Vehicle Licence Conditions approved by the Council in April 2007, stated that under the heading 'Identification Plate', the yellow plate which identified the vehicle as a Private Hire Vehicle and required to be exhibited in a Private Hire Vehicle by virtue of Section 48 (6)(a) of the Local Government (Miscellaneous Provisions) Act 1976, shall be securely fixed to the rear of the vehicle in a conspicuous position and in such a manner as to be able to be removed by an authorised officer of the Council or a police constable. Currently no previous exemption has been given by Breckland Council from displaying a rear identification plate.

Various products had been considered and a proposal for a less obtrusive licensing plate, the size of a road fund licence, had been identified and highlighted at Appendix D of the report.

Other Councils across the country had allowed such an exemption but had a list of executive vehicles or a specific policy in place prior to an exemption being applied. A proposed policy had been attached at Appendix C of the report for Members consideration.

In response to a question as to whether the vehicles listed on the policy was exhaustive. The applicant, Mr Rudling, said that he would prefer not to have a definitive list as vehicles were likely to change.

Cllr Armes asked if the new disc presented was considered suitable

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for the visually impaired. The Licensing Officer advised that the disc being proposed was slightly bigger than pictured and the type face could be changed. Mr Rudling stated that he had never known anyone to walk to the rear of the car to look at the plate. Private Hire Vehicles were very different to Hackney Carriage Vehicles as fares were all pre-booked. He highlighted some examples of his bookings which included wedding hire and pointed out that it was not good for business when a bride turned up at a church in a car that resembled a taxi cab.

The four points listed at Appendix C were highlighted.

Cllr Askew had no objections to the new disc but asked if it was possible to have a sticker of the same size displayed on the rear window screen.

Cllr Armes thought this to be a good idea and proposed the aforementioned suggestion which was accordingly seconded. It was further agreed that any future requests for such licence plates be dealt with at officer level.

RESOLVED that:

- (1) all vehicles being operated by a company predominately carrying out **chauffer hire** be exempt from displaying the identification plate on the rear of any licensed vehicle owned by the company;
- (2) the new windscreen identification plate as highlighted at Appendix D of the report be approved; subject to:
 - a) the new windscreen identification plate being displayed in both the front and rear windscreens of the said licensed vehicles; and
 - b) a bold colour and appropriate font be used on the new windscreen identification plates to assist the visually impaired;
- (3) the policy for exemption to the displaying of a rear identification plate be approved; and
- (4) any future requests for new licence plates be dealt with at Officer level.

59/13 LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 (AGENDA ITEM 7)

This item was discussed before agenda item 6.

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As this meeting was open to the public, Mr Rudling who was in attendance for agenda item 6 was allowed to remain in the room whilst this matter was being discussed and was invited to put his views forward.

The Licensing and Business Support Manager presented the report which was to consider the current authorisation and practices in revoking hackney carriage/private hire driver's licences.

As a result of a judgement made following a recent judicial review against Cardiff City Council, it had been found that the current procedure of suspending a driver licence whilst further investigation was being made was now unlawful. Members were now being asked that further consideration be given to alter Breckland Council's current policy and practice.

The Licensing & Business Support Manager explained that if approved, these powers of revocation would only be used in extreme cases. The driver would be contacted immediately, and consultation would then take place with the responsible Director and the Chairman of Appeals as well as the Chairman of the Licensing Committee. Any decision to revoke would not be made by the Officer alone. If at a later date the case was dropped, the licence would be immediately re-instated without any additional requirements unless it was on medical grounds.

It was noted that under the Council's Constitution, Part B2 (Delegations to Committees for Non-Executive Functions), General Purposes Committee's powers include the carrying out of any non-executive powers other than powers specifically delegated to another committee (and those reserved to Full Council). Taxis and Hypnotism were one of the powers delegated to the Appeals Committee, including:

"To deal with applications for licences for Hackney Carriages and Private Hire Vehicles, in so far as these were not delegated to Officers".

The purpose of this report was to finalise the arrangements for revocation of hackney carriage and private hire drivers so that the delegation could be reviewed and the revocation of licences could be delegated to Officer level.

A Member felt that if these delegations were changed, the Appeals Committee would not have any business to discuss and therefore disagreed with the Licensing & Business Support Manager's proposals.

The Chairman also disagreed with the proposals and felt that the persons licence should not be revoked until a full investigation had been carried out and the matter determined by the Appeals

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Committee. Members of this Committee should recommend that the policy be adapted for the granting of licences so if a licence holder committed a serious offence then the matter be brought to a Special meeting of the Appeals Committee. Such a meeting could be arranged within a matter of days rather than having to wait until the next Committee cycle for a decision.

The Solicitor said that it was the pending issue that was the issue in the Cardiff case. Such meetings would have to be called urgently as soon as the Officer knew the seriousness of the case. He then highlighted Cardiff's own Licensing policy that had a points system and also read aloud the Court's findings.

The Licensing & Business Support Manager said that she had taken legal advice in regard to current case law and stressed that Breckland Council could be open to challenge. Such case law would continue to be monitored.

The Chairman thought that the judge seemed to be stating that revocation or suspension pending trial was not an option.

The Solicitor said that time was the issue from when the Officer suspended a licence until the time it was brought before the Committee. He thought it wise to adapt the policy and to convene meetings within a certain timeline seemed the best way forward and would not go against the judgement made. The whole thrust of the legal decision was to ensure that any Council had only one opportunity to either suspend or revoke a drivers licence.

With this in mind, the Licensing & Business Support Officer felt that the pool of Members on the Appeals Committee would have to be increased.

Cllr Duffield asked if other Councils had questioned the decision of the Judicial Review and felt that the decision from that judgement should come before the Appeals Committee at another time. In response, Members were informed that Councils were unlikely to challenge the decision due to the cost.

The Solicitor suggested that it would be wise to increase the pool of Members who were trained in a quasi judicial way and to increase the number of substitutes.

The Chairman proposed that option B should be supported subject to the current practice being amended so that any matter of serious nature be immediately brought to the Appeals Committee and that a meeting be convened within 3 working days from the date the information was received. She further proposed that a diary note be made to re-visit this in a year's time.

The Licensing Officer was not in support of the proposal and

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highlighted a scenario that could affect public safety. The Licensing & Business Support Officer also highlighted the risk of repeat offences during the time of Officers being informed of the offence and the Committee meeting.

The Solicitor asked Members to put these matters into perspective in relation to reasonable probabilities not fantastic possibilities.

Cllr North pointed out that if the Council continued its current practice it would be doing so illegally and felt that if the proposed option was approved, and an offence was committed at the end of a working week, waiting three working days could leave this authority open to legal challenge if a further offence was committed during a weekend.

Cllr Askew thought that this judgement had put the Council in a very difficult situation. He pointed out however, that if a serious offence was committed, the person involved would most likely be placed into police custody and therefore would not be able to re-commit.

The Solicitor stated that the Council would have to take reasonable steps, three days in his opinion was reasonable, as was the amendment that would satisfy any evidence brought.

The Chairman reminded the Officers that the Members of the Appeals Committee were the ones that were accountable to the public.

The Licensing & Business Support Officer stressed that Option A would provide the necessary speed for public safety. The Chairman agreed but pointed out that it would not provide the justice, particularly if the offence had been of a malicious nature.

It was proposed and seconded that Option B as suggested above be approved subject to a further option that the system be reviewed after six months.

It was agreed that the proposal would also apply to health issues.

Following further discussion, it was

RESOLVED that:

- (1) Option A be refused;
- (2) Option B be re-written and approved as follows:

The current policy be left in place (which could result in legal challenge and failure to act quickly to protect the public) but the current practice be amended so that any matter of a serious nature be immediately brought to a Special Appeals Committee meeting within 3 working days from the date the information was

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received;

- (3) Officers be authorised to act immediately and call a meeting;
and
- (4) the amended practice be brought back to the Appeals Committee after a period of 6 months.

RECOMMEND to Council that the membership of the Appeals Committee be increased to accommodate any urgent meetings required.

The Chairman said that she would like to be kept informed of any similar matters/judgements affecting other Councils.

60/13 NEXT MEETING (AGENDA ITEM 8)

The arrangements for the next meeting on Wednesday, 5 June 2013 at 10.00am in the Norfolk Room were noted.

The meeting closed at 11.46 am

CHAIRMAN