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12 July 2010

S U M M O N S

MEETING: Licensing Board
DATE: 20 July 2010
TIME: 6.00pm
PLACE: Council Chamber, Town Hall, Gosport
Democratic Services contact: Lisa Reade

LINDA EDWARDS
BOROUGH SOLICITOR

MEMBERS OF THE BOARD

Councillor Beavis (Chairman)
Councillor Murphy (Vice Chairman)

Councillor Bradley	Councillor Mrs Cully
Councillor Carter C K	Councillor Foster-Reed
Councillor Carter C R	Councillor Jacobs
Councillor Chegwyn	Councillor Scard

The Mayor (Councillor Allen) (ex officio)
Chairman of P & O Board (Councillor Hook) (ex officio)

FIRE PRECAUTIONS

(To be read from the Chair if members of the public are present)

In the event of the fire alarm (continuous ringing sound) sounding, please leave the room immediately.

Proceed downstairs by way of the main stairs or as directed by GBC staff, following any of the emergency exit signs. People with disability or mobility issues please identify yourself to GBC staff who will assist in your evacuation of the building.

IMPORTANT NOTICE:

- If you are in a wheelchair or have difficulty in walking and require access to the Committee Room on the First Floor of the Town Hall for this meeting, assistance can be provided by Town Hall staff on request

If you require any of the services detailed above please ring the Direct Line for the Democratic Services Officer listed on the Summons (first page).

NOTE:

- i. Councillors are requested to note that, if any Councillor who is not a Member of the Board wishes to speak at the Board meeting then the Borough Solicitor is required to receive not less than 24 hours prior notice in writing or electronically and such notice shall indicate the agenda item or items on which the member wishes to speak.
- ii. Please note that mobile phones should be switched off for the duration of the meeting.

AGENDA

RECOMMENDED
MINUTE
FORMAT

PART A ITEMS

1. APOLOGIES FOR NON-ATTENDANCE
2. DECLARATIONS OF INTEREST

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter, any personal or personal and prejudicial interest in any item(s) being considered at this meeting.

3. MINUTES OF THE MEETING OF THE BOARD HELD ON 8TH JUNE 2010 [copies herewith].
4. DEPUTATIONS – STANDING ORDER 3.5

(NOTE: The Board is required to receive a deputation(s) on a matter which is before the meeting of the Board provided that notice of the intended deputation and its object shall have been received by the Borough Solicitor by 12 noon on Friday, 16 July 2010. The total time for deputations in favour and against a proposal shall not exceed 10 minutes).

5. PUBLIC QUESTIONS – STANDING ORDER 3.6

(NOTE: The Board is required to allow a total of 15 minutes for questions from Members of the public on matters within the terms of reference of the Board provided that notice of such Question(s) shall have been submitted to the Borough Solicitor by 12 noon on Friday, 16 July 2010).

6. ADOPTION OF REVISED SCHEDULE 3 LOCAL GOVERNMENT (MISCELLANEOUS) PROVISIONS ACT 1982 AND COUNCIL POLICY TO INCORPORATE LICENSING OF SEXUAL ENTERTAINMENT VENUES.

In order for the Council to have discretionary grounds to refuse applications, control the number, and impose conditions on the operation of premises used as Sexual Entertainment Venues it is necessary to adopt the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Council policy to incorporate these premises as Sex Establishments.

7. THE GRANT OF A HACKNEY CARRIAGE DRIVER'S LICENCE TO A NON EU CITIZEN, NOT ENTITLED TO WORK IN THE UK.

PART II
Contact Officer:
Tom Dagens
Ext 5305

Licensing Board
20 JULY 2010

At their last meeting on the 8th June the Licensing Board requested a report into the circumstances surrounding the grant of a hackney carriage driver's licence to an individual subsequently reported by the Border Agency as not being entitled to work in the United Kingdom.

PART II
Contact Officer:
Tom Dagens
Ext 5305

8. ANY OTHER ITEMS

Which by reason of special circumstances the Chairman determines should be considered as a matter of urgency

9. EXCLUSION OF PUBLIC

To consider the following motion:

That in relation to the following item the public be excluded from the meeting, as it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during these items there would be disclosure to them of exempt information within Paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972, and further that in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons set out.

**PART B ITEMS
FOLLOWING THE EXCLUSION OF PRESS AND PUBLIC**

Item No.	Item	Paragraph no. of Part I of Schedule 12A of the Act	
10	APPLICATION FOR THE ISSUE OF A HACKNEY CARRIAGE VEHICLE DRIVERS LICENCE	Paragraph 1 The report identifies sensitive personal information	PART II Contact Officer: Gaynor Williams Ext 5503
11	APPLICATION FOR THE ISSUE OF A PRIVATE HIRE VEHICLE DRIVERS LICENCE	Paragraph 1 The report identifies sensitive personal information	PART II Contact Officer Gaynor Williams Ext 5503
12	APPLICATION FOR THE ISSUE OF A PRIVATE HIRE VEHICLE DRIVERS LICENCE	Paragraph 1 The report identifies sensitive personal information	PART II Contact Officer Clive Tizard Ext 5609
13	APPLICATION FOR THE ISSUE OF A HACKNEY CARRIAGE AND A PRIVATE HIRE VEHICLE DRIVERS LICENCE	Paragraph 1 The report identifies sensitive personal information	PART II Contact Officer Gaynor Williams Ext 5503

AGENDA ITEM NO. 6

Board/Committee:	Licensing Board
Date of Meeting:	20 th July 2010
Title:	Adoption of revised Schedule 3 Local Government (Miscellaneous) Provisions Act 1982 and Council policy to incorporate licensing of Sexual Entertainment Venues.
Author:	Environmental Services Manager
Status:	FOR RECOMMENDATION TO THE POLICY AND ORGANISATION BOARD

Purpose

In order for the Council to have discretionary grounds to refuse applications, control the number, and impose conditions on the operation of premises used as Sexual Entertainment Venues it is necessary to adopt the revised Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 and Council policy to incorporate these premises as Sex Establishments.

Recommendation

That the Council adopts the revised Schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982 and amends its existing policy on Sex Establishments to incorporate Sexual Entertainment Venues as Sex Establishments.

1 Background

- 1.1 Section 2, schedule 3 of the Local Government (Miscellaneous) Provisions Act 1982 introduced a system of controls for premises deemed to be "Sex Establishments" i.e. sex shops and sex cinemas. Local Authorities that have adopted the Schedule are able to impose a licensing regime on such premise.
- 1.2 In October 1982 this council adopted the schedule and began a system for the licensing of sex establishments that continues to the present.
- 1.3 Adoption of the schedule provides the licensing authority with powers to :
 1. Limit the number of Sex Establishments operating in their area
 2. Impose conditions on the licences issued.
 3. Consider the appropriateness of the locations such premises
 4. Reject applications

Licences are issued on an annual basis

- 1.4 The present adoption permits 2 sex establishments (of any kind) in the borough.

2 Report

- 2.1 The Police and Crime Act 2009 has identified a new type of entertainment venue, the Sexual Entertainment Venue [SEV]. These types of premises are defined as “any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer.

“relevant entertainment” means—

- (a) any live performance; or
- (b) any live display of nudity;

which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means). Examples of activities covered includes lap dancing, pole dancing, table dancing, strip shows, peep shows and live sex shows. (Some exemptions exist for premises that provide such entertainment irregularly e.g. public houses).

- 2.2 In order that the operation of such premises can be regulated the Police and Crime Act has amended the Local Government (Miscellaneous) Provisions Act 1982 Schedule 3 to incorporate SEVs within the definition of Sex Establishments. Councils that have already adopted schedule 3 must, if they wish to incorporate SEVs as part of their licensing regime adopt the amended schedule. If the Council fails to do so by 6th April 2011 it will be required to carry out statutory consultation prior to making any resolution to adopt the revised schedule and policy.
- 2.3 In the absence of a system of control, SEVs may still open in an uncontrolled manner. Failure to adopt schedule 3 by the licensing authority does not prevent this type of premises from opening. The specific activity undertaken would not be licensable under the Licensing Act 2003 (although other activities such as the sale of alcohol would).
- 2.4 If the Licensing Board is minded to support adoption of the revised schedule 3 and Council policy, it must be formally approved by the Full Council.. The earliest opportunity for this will be the Council meeting on the 29th September 2010. The revised policy must be advertised by public notice, Appendix A in advance of implementation, the earliest date for implementation would be the 1st

December 2010.

- 2.5 Human Rights Implications: The proposed restrictions on sex establishments may have a limited impact in respect of Article 8 – The Right to Respect for Private and Family Life. However, this is qualified by the Council's right to interfere on the grounds of protecting health and morals. No other issues have been identified.

3 Risk Assessment

- 3.1 Failure to adopt the revised schedule 3 prevents the council as the licensing authority from controlling SEVs operating in their area.

4 Conclusion

- 4.1 Control of sex establishments has to date been successfully managed via adoption of Schedule 3 provisions
- 4.2 SEVs are new type of sex establishment that can be controlled in a similar way if a revised schedule is adopted identifying SEVs as sex establishments.
- 4.3 As part of the process of re adoption of schedule 3 the council should also re adopt its previous policy of permitting no more than two sex establishments to operate in the borough at any one time.
- 4.4 The revised schedule 3 could come into force with effect from 1st December 2010.

Financial Services comments:	
Legal Services comments:	Contained in the report
Service Improvement Plan implications:	None
Corporate Plan:	Performance: adoption of transparent criteria for licensing of relevant premises
Risk Assessment:	Included in the report
Background papers:	Report to the Environmental Health Committee 12 th October 1982." Adoption of Schedule 3 Local Government (Miscellaneous) Provisions Act 1982. Report to Policy and Organisation Committee 26 th June 2003 " Gosport Borough Entertainment Policy"
Appendices/Enclosures:	
Appendix 'A'	Public Notice
Report author/ Lead Officer:	T Dagens 5516 tom.dagens@gosport.gov.uk

***Borough Council of Gosport
Local Government (Miscellaneous Provisions) Act 1982
As amended by the Policing and Crime Act 2009.
Control of Sex Establishments.***

NOTICE IS HEREBY GIVEN under Section 2(2) of the Local Government (Miscellaneous Provisions) Act 1982 as amended by section 27 of the Policing and Crime Act 2009("The Act") that The Borough Council of Gosport on the 29th September 2010 resolved to bring into force from the 1st December 2010 Schedule 3 to the above Act which provided for the control of sex establishments (i.e. sex shops, sex cinemas and sexual entertainment venues).

From the 1st December it will be an offence punishable on summary conviction by a fine not exceeding £20,000 to use any premises, including any vehicle, vessel or stall in the Borough of Gosport as a sex establishment unless a licence is in force under schedule 3 to the above Act in respect of the premises. Where premises are in use as a sex establishment (sexual entertainment venue only) before the date of the first publication of this Notice, and in respect of which an application for a licence is made before 1st December 2010 that use may continue until the application is determined.

A licence shall not be granted to :

- (a) a person under the age of 18;
- (b) a person who has been disqualified from holding such a licence;
- (c) a person, other than a body corporate, who is not resident in the United Kingdom, or was not so resident throughout the period of six months immediately preceding the date of the application;

or

- (d) a body corporate which is not incorporated in the United Kingdom;

No appeal, other than on questions of fact, exists against refusal on any of these grounds.

An application may be refused if;

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(b) the business to which the application relates would be managed by, or carried on for the benefit of a person, other than the applicant, who would be refused a licence if he/she made the application themselves;

(c) the number of sex establishments in the relevant locality at the time of the application is equal to or exceeds the number (which may be nil) which the Council consider is appropriate for that locality;

or

(d) it would be inappropriate to grant the application, having regard to ;

(i) the character of the relevant locality

(ii) the use to which any premises in the vicinity are put,

or

(iii) the lay-out, character or condition of the premises concerned.

An appeal lies to a Magistrates Court, and then to the Crown Court, against a refusal on ground (c) or (d).

Premises in use as sex establishments on the 30th November 2010, and in respect of which an application is required to be made before 1st December 2010, are to be given preference over other applicants by the Borough Council in deciding which (if any) of several applications the Council is prepared to grant.

Licences may be issued for not more than one year and may be subject to such terms, conditions and restrictions as may be specified. Provision is made in schedule 3 to the Act for the renewal, transfer, revocation and cancellation of licences and for the variation of terms, conditions and restrictions.

Licensed premises may be inspected at any reasonable time by a constable or an authorised officer of the Council.

The Council may waive the requirement of a licence in any case where they consider that to require such a licence would be unreasonable or inappropriate.

Application forms and copies of the form of notice to be given in respect of applications may be obtained at the address below

DATED

Linda Edwards
Borough Solicitor
Borough Council of Borough

Town Hall
High Street
Gosport
PO12 1EB

AGENDA ITEM NO. 7

Board/Committee:	Licensing Board
Date of Meeting:	20 JULY 2010
Title:	The grant of a hackney carriage driver's licence to a non EU citizen, not entitled to work in the UK.
Author:	Environmental Services Manager
Status:	FOR NOTING

Purpose

At their last meeting on the 8th June the Licensing Board requested a report into the circumstances surrounding the grant of a hackney carriage driver's licence to an individual subsequently reported by the Border Agency as not being entitled to work in the United Kingdom.

Recommendation

That the report be noted.

1 Background

- 1.1 This Council is required by statute to adopt a system for the licensing of drivers of Private Hire and Hackney Carriage Vehicles to ensure that they are a "fit and proper person" to drive such vehicles. The system adopted by this Council is based on government guidance and requires the Applicant to disclose details of all convictions, cautions, and endorsements for motoring offences certifying that the information submitted is complete and true. The applicant's driving licence is examined for any relevant road traffic offences and a referral is made to the Criminal Records Bureau for an enhanced disclosure detailing all recorded convictions, cautions, and any intelligence.
- 1.2 To date case law has indicated that the test of fit and proper has focused on criminality especially previous convictions and driving histories.

2 Report

- 2.1 Applicant X first applied for a hackney carriage driver licence in August 2006. As part of that application applicant X submitted an application form that indicated no past criminal history. The application was accompanied by a UK driving licence issued by the DVLA and an application to the Criminal Records Bureau for an enhanced disclosure.

- 2.2 The CRB disclosure was received in December 2006 and contained no contra indicators to the grant of the licence.
- 2.3 The applicant in addition to the above completed his DVLA taxi driver's assessment and submitted confirmation of his medical fitness to drive a hackney carriage.
- 2.4 The hackney carriage driver's licence was originally issued in September 2007. The licence was subject to renewal in 2008 and 2009.
- 2.5 As part of the 2008 renewal Applicant X provided a certificate of good conduct issued by the Embassy of his originating country. [This procedure had been adopted in 2008 as good practice to extend the criminal record checks on foreign nationals].
- 2.6 The 2009 renewal again involved the need for a CRB check; this was provided again with no contra indicators from the Bureau.
- 2.7 Applicant X was removed from the UK in late May 2010 following an investigation by the UK Border Agency, the agency did not prior to this action contact this council for any information relating to applicant X.
- 2.8 In February 2010 the Department for Transport issued revised guidance on the licensing of drivers this guidance included the comment that " The Department considers it appropriate for licensing authorities to check on an applicant's right to work before granting taxi or PHV driver's licence ". This instruction was adopted by the licensing team immediately. Applicants X's licence would have expired in October 2010 and any application to renew would have been subject to the revised procedure. Prior to this instruction checks on individuals right to work in the UK had not been undertaken as the grant of licence did not constitute employment.
- 2.9 As a result of this incident a meeting has been held with the UK Border Agency to discuss this case and identify improved working practices on both sides. The application form for all drivers' licences has been revised with a specific question on the applicant's right to work in the UK incorporated. A false declaration on the application is a ground for refusal or revocation and may amount to a criminal offence.

3 Risk Assessment

- 3.1 The grant of licence to drive hackney carriages or private hire vehicles to individuals not entitled to work in the UK may assist such persons in obtaining work thus committing a criminal offence and liable to have their permission to remain in the United Kingdom revoked. Drivers are in a position of a trust often conveying

vulnerable members of the public such as children so it is paramount that checks are carried out to ensure all prospective drivers are able to legally work in the United Kingdom in order to maintain public confidence.

4 Conclusion

4.1 Applicant X was granted in total three consecutive licences to drive a hackney carriage. At the time of issuing each licences the applicant met all requirements of the council, the legislation and guidance current at the time relating to the grant of a hackney carriage drivers licence.

4.2 As a result of the guidance from the Department for Transport and consultation with the UK Border Agency improved measures have been adopted to monitor applications from non EU residents for driver's licences.

Financial Services comments:	
Legal Services comments:	Contained in the report.
Service Improvement Plan implications:	Performance. Partnership
Corporate Plan:	
Risk Assessment:	Included in the report
Background papers:	None
Appendices/Enclosures:	None
Report author/ Lead Officer:	T Dagens 02392 545516