



# **COUNCIL**

## **26 SEPTEMBER 2018**





18 September 2018

**Unless a majority of the Council resolve to extend the meeting before 10.00 pm it will automatically end at 10.00 pm in accordance with Council Procedure Rule 17.2.**

To all Member of the Council,

The Annual Meeting of **COUNCIL** will be held in the **Council Chamber - Mid Sussex District Council** at these offices on **WEDNESDAY, 26TH SEPTEMBER, 2018 at 7.00 pm** when your attendance is requested.

Yours sincerely,

KATHRYN HALL  
Chief Executive

**Pages**

1. Opening Prayer
2. To receive questions from members of the public pursuant to Council Procedure Rule 9.
3. To confirm Minutes of the meeting of Council held on 25 July 2018. **7 - 14**
4. To receive Declarations of Interest from Members in respect of any matter on the Agenda
5. To consider any items that the Chairman of the Council agrees to take as urgent business.
6. Chairman's Announcements
7. Amendment to the Hackney Carriage and Private Hire Licensing Convictions Policy. **15 - 32**
8. Recommendations from Cabinet - 24 September

To be tabled

*Working together for a better Mid Sussex*

9. To receive the Leader's Report
10. Report of Cabinet Members, including questions pursuant to Council Procedure Rule 10.1.
11. Questions from members pursuant to Council Procedure Rule 10.2.

To: **Members of Council:** Councillors Bruce Forbes (Chairman), Colin Trumble (Vice-Chair), MacNaughton, Gary Marsh, Steven Hansford, Sandy Ellis, Anne Boutrup, Edward Belsey, Jim Knight, Judy Llewellyn-Burke, Margaret Hersey, Claire Fussell, Andrew Lea, David Dorking, Phillip Coote, Heidi Brunson, Pete Bradbury, Michelle Binks, Liz Bennett, Margaret Belsey, John Belsey, Colin Holden, Gordon Marples, Anthea Lea, Tony Dorey, Rod Clarke, Cherry Catharine, Andrew Barrett-Miles, Jonathan Ash-Edwards, Jacqui Landriani, Norman Mockford, Richard Cherry, Ruth de Mierre, Sue Hatton, Ginny Heard, Chris Hersey, Anne Jones, Edward Matthews and Robert Salisbury

This page is intentionally left blank

## Minutes of a Meeting of Mid Sussex District Council held on 25 July 2018 from 7.00 pm to 8.19 pm.

**Present:**

**Councillors:**

Bruce Forbes (Chairman)

Colin Trumble (Vice-Chairman)

Jonathan Ash-Edwards  
Andrew Barrett-Miles\*  
Edward Belsey  
John Belsey  
Margaret Belsey  
Liz Bennett  
Michelle Binks  
Anne Boutrup\*  
Pete Bradbury\*  
Heidi Brunsdon\*  
Cherry Catharine  
Richard Cherry  
Rod Clarke  
Phillip Coote  
Ruth de Mierre  
Tony Dorey\*  
David Dorking  
Sandy Ellis  
Claire Fussell

Steven Hansford\*  
Sue Hatton\*  
Ginny Heard  
Chris Hersey  
Margaret Hersey  
Colin Holden  
Anne Jones MBE  
Jim Knight  
Jacqui Landriani\*  
Andrew Lea\*  
Anthea Lea  
Judy Llewellyn-Burke  
Andrew MacNaughton  
Gordon Marples  
Gary Marsh  
Edward Matthews  
Norman Mockford\*  
Pru Moore  
Howard MUNDIN

Kirsty Page  
Geoff Rawlinson\*  
Peter Reed  
Robert Salisbury\*  
Linda Stockwell\*  
Dick Sweatman  
Mandy Thomas-Atkin  
Neville Walker  
Garry Wall  
Anthony Watts Williams\*  
Norman Webster  
Rex Whittaker  
John Wilkinson\*  
Peter Wyan

\*Absent

**1. OPENING PRAYER**

The opening prayer was read by the Vice-Chairman.

**2. TO RECEIVE QUESTIONS FROM MEMBERS OF THE PUBLIC PURSUANT TO COUNCIL PROCEDURE RULE 9**

None.

**3. TO CONFIRM THE MINUTES OF THE MEETING OF COUNCIL HELD ON 20 JUNE 2018**

The minutes of the meetings of Council held on 20 June 2018 were agreed as a correct record and signed by the Chairman.

**4. TO RECEIVE DECLARATIONS OF INTEREST FROM MEMBERS IN RESPECT OF ANY MATTER ON THE AGENDA**

Councillor Ash-Edwards declared a personal interest as Chairman of the Sussex Learning Trust and as a person contracted to train school governors in relation to the Leaders Report at item 11.

**5. TO CONSIDER ANY ITEMS THAT THE CHAIRMAN OF THE COUNCIL AGREES TO TAKE AS URGENT BUSINESS**

None.

**6. CHAIRMAN'S ANNOUNCEMENTS**

The Chairman read a letter received from the Office of the Duke and Duchess of Sussex in relation to the Royal Wedding.

**7. DEVELOPMENT INFRASTRUCTURE AND CONTRIBUTIONS; AFFORDABLE HOUSING AND DEVELOPMENT VIABILITY SUPPLEMENTARY PLANNING DOCUMENTS**

Councillor Walker proposed the report as Chairman of the Scrutiny Committee for Community, Housing and Planning, noting that the documents had gone through intense scrutiny by the Scrutiny Committee as well as public consultation. He drew Members attention to paragraph 2 of the report noting the importance of the documents, without which the full impacts of development on existing and future communities will not be properly mitigated and the benefits of new development may not be secured. Councillor MacNaughton seconded the report, concurring with Cllr Walker's comments.

As there were no questions, the Chairman took Members to the recommendations, which were agreed unanimously.

**RESOLVED**

That Council agrees to:

- (i) Approve the Development Infrastructure and Contributions, Affordable Housing, and Development Viability SPDs for adoption;
- (ii) Approves the publication of the Development Infrastructure and Contributions, Affordable Housing, and Development Viability SPDs; Consultation Statement; and Adoption Statement; and
- (iii) Gives delegated authority to the Divisional Leader for Planning and Economy to make typographical and minor factual and clarification corrections to the documentation as necessary before publication.

**8. AMENDMENTS TO LICENSING POLICY**

Councillor Walker introduced the report, noting that it is a statutory requirement for the Council to adopt. Councillor Webster seconded the report thanking Officers and Members of the Scrutiny and Licensing Committees for their thorough work on the policy.

The Chairman took Members to the recommendation which was agreed unanimously.



## **RESOLVED**

That Council adopt the amendments to the Licensing Policy as detailed in Appendix 1 of the report.

### **9. DELEGATION TO PLANNING OFFICERS TO DEAL WITH PERMISSIONS IN PRINCIPLE AND THE TECHNICAL APPLICATION THAT MUST FOLLOW**

Councillor MacNaughton introduced the report, noting that Members have already received a briefing on the subject. He drew Members attention to the short 5 week timescale to determine the applications hence the need to delegate to officers to carry out the relevant checks in the time available. Councillor Walker seconded the report.

In response to Member's questions, the Cabinet Member for Housing and Planning confirmed that fees are payable for an 'in principle' application at a rate of £402 per 0.1 hectare. He confirmed all members will be informed of the new delegations which relate to developments of up to 9 units.

The Chairman took Members to the recommendation which was agreed unanimously.

## **RESOLVED**

Council agrees:

In addition to the present delegations to planning officers there should be a delegation to enable planning officers subject to consultation with at least one planning chairman and the relevant Ward members to:-

Decide the outcome of an application for Permission in Principle and the application for Technical Details Consent that follows.

### **10. RECOMMENDATIONS FROM CABINET – 9 JULY 2018**

The Chairman introduced the report and took Members to the recommendations which were agreed unanimously.

## **RESOLVED**

Council approved:

- (i) that £221,981 grant income relating to Flexible Homelessness Support Grant be transferred to Specific Reserve as detailed in paragraph 22 of the Cabinet report;
- (ii) that £26,266 grant income relating to Preventing Homelessness Grant be transferred to Specific Reserve as detailed in paragraph 23 of the Cabinet report;
- (iii) that £3,791 be transferred to Specific Reserve as detailed in paragraph 24 of the Cabinet report;

- (iv) that £970 be transferred to Specific Reserve as detailed in paragraph 25 of the Cabinet report;
- (v) that £34,051 be transferred to Specific Reserve as detailed in paragraph 26 of the Cabinet report;
- (vi) that £19,353 be transferred to Specific Reserve as detailed in paragraph 27 of the Cabinet report;
- (vii) the variations to the Capital Programme contained in paragraph 33 of the Cabinet report in accordance with the Council's Financial Procedure rule B4.

## **11. TO RECEIVE THE LEADER'S REPORT**

The Leader focussed on partnership working in a number of areas including the positive relationship with Homes England following the formal launch of the investment at the Northern Arc, Burgess Hill. He commented on the scale of the investment by the Government as it is the most ambitious project for Homes England and for this area of the Country and will bring significant benefit to the town and district. The launch brings pace and certainty to the scheme and a greater emphasis on the delivery of affordable homes. He also noted that he attended the Transport for South East Shadow Board meeting which focussed on supporting the Council's growth ambitions within Mid Sussex.

The Leader confirmed that he had taken chairmanship of the Greater Brighton Economic Board and noted that the Board had been in place for 5 years, achieving a great deal. However, he considered that it has scope to be more ambitious and that it provides a strong platform for this authority to put forward its future ambitions. He also confirmed that the Coast to Capital Joint Committee has also launched their Strategic Economic Plan which he will be in a position to report back on at a future meeting.

On a local issue, he commented on the significant work that officers, partners and the Rt. Hon. Sir Nicholas Soames MP have carried out in order to secure post-16 education at the site of the former 6<sup>th</sup> form collage in Haywards Heath. This has resulted in a robust business case submitted to the Rt. Hon Anne Milton MP, Minister for Apprenticeships and skills and the Council will continue to be part of the work to safeguard post-16 education in the District.

A Member welcomed this update on the college, stressing the importance of it getting the accolade it once had.

## **12 REPORT OF CABINET MEMBERS, INCLUDING QUESTIONS PURSUANT TO COUNCIL PROCEDURE RULE 10.1.**

### Report of the Deputy Leader and Cabinet Member for Economic Growth

The Deputy Leader highlighted the positive take-up of Micro Business grants with 30 applications due to be determined at the next meeting. Should these be accepted, there is still further funding available and he encouraged Members in the North of the District to promote the scheme as there has been a low take up in that area.

He confirmed that the Burgess Hill Member Steering Group recently met to look at the A2300 improvement scheme and sustainable transport package before a public

engagement event in the Autumn. He also referenced the Council's recent launch of the Economic Development Strategy which was well supported by over 80 representatives from the business and educational skills sectors and the Rt. Hon. Sir Nicholas Soames MP. He thanked Officers involved in organising the event, and noted the positive interest in expanding business and working with the Council from the key note speakers at Cells 4 Life, and Sussex University.

He also confirmed that the 'Open 4 Business' event will be taking place later this year and will focus on skills and apprenticeships.

In response to a Members query, he acknowledged that businesses are often frustrated by the lack of space to expand into. He confirmed that the Hub is now under development on the A2300 and site acquired by Northern Arc will provide additional employment space, along with the Science and Technology park in due course. The work carried out by the Site Allocations Working Group will also consider potential employment space.

A Member commented on the amount of investment going into Burgess Hill and asked what is planned to assist commerce in Haywards Heath. The Deputy Leader responded that the Council is keen to ensure that the towns complement each other and that they do not have to compete as their offer is different. The Council's ownership of The Orchards provides an opportunity to consider enhancements. He also noted that the town centres are changing and need to adapt to meet the needs of how we live, for example offering a shopping experience and addressing opening hours.

#### Report of the Cabinet Member for Finance and Performance

The Cabinet Member confirmed that the Audit Committee met on 24 July and the 2017/18 accounts will be signed off by the end of the month. She also highlighted that the performance report will be presented to the Scrutiny Committee for Leader, Resources and Economic Growth in October and that current figures indicate 84 % of targets have been met or exceeded, compared to 76% in the previous year.

She drew Member's attention to the Ministry of Housing, Communities and Local Government's technical consultation which has been published and indicates that the new homes bonus will be replaced with an alternative way to encourage housing development. There is also proposed mitigation to help negotiate the Revenue Support Grant which may result in the Council not being in the position of paying funds to the Government in following years.

#### Report of the Cabinet Member for Customer Services

The Cabinet Member confirmed that on the Mid Sussex District Council Facebook pages, videos are proving very popular and well received. A few examples include a video shot during the volunteer day at the Scouts new building, the Redwood Centre in Hayward's Heath demonstrating the Council's commitment to supporting local voluntary groups. This piece featured Cllr Ash- Edwards and focused on bringing the venue back into community use. To date this has been viewed over 1200 times.

The second example was a video shot during the Homes England announcement of their involvement in the Northern Arc, a significant vote of confidence in the work of the Council. This video featured Cllr Wall and has been viewed over 2,200 times.

She confirmed that Democratic Services have an Election to run for Lindfield Parish Council, with polling taking place on Thursday 13th September, and the Annual Canvass is underway with 67% of returns already received. This is split of 30% postal returns and 70% of returns carried out online.

The Cabinet Member confirmed that the Customer Service team have employed two new members of staff and all performance indicators have been achieved again this month. She noted that the Customer Services System 'Sales Force' continues to be developed. Response times have improved and there is an increase in the number of customer queries that can be resolved at the first point of contact. This aids officers in giving an excellent service for all residents who telephone in.

#### Report of the Cabinet Member for Service Delivery

The Cabinet Member confirmed that the Green Flag has been successfully retained for Beech Hurst Gardens, and for the first time in a number of years the Council has successfully obtained another Green Flag at St John's Park in Burgess Hill. He thanked Officers and Contractors for their hard work in gaining this recognition and looks forward in future to submitting another application in East Grinstead at Ashplats Wood.

He confirmed that the parking team has successfully introduced the new methods of payment in the Council's car parks, including cashless, mobile apps as well as cash which has been welcomed by the public.

He noted the work carried out over the past three years to increase users using the leisure centres and confirmed that the last part of the current leisure centre investment with Places for People saw the opening of the leisure pool at the Triangle. A planning application will be submitted soon for the increase in parking spaces at the Dolphin Leisure Centre.

The Cabinet Member also drew Member's attention to the significant increase of unauthorised Traveller incursions in the district and in particular on Council owned land. It has resulted in a significant amount of work with partners to seek remedies and he confirmed that the correct result has been achieved each time. The Cabinet Member expressed his thanks to the County Officers who have worked with the Council throughout a difficult period and to the local police who have been scrupulously fair to all parties. A Member also thanked the Cabinet Member for the good communication and well-handled strategy for these incursions.

With regards to recycling rates, he confirmed that the Council is now in the high 40%, approaching the 50% that all Councils must achieve by 2020. In response to a Members comments on food waste he confirmed that the Council is working with the County Council who are keen to pilot a food waste service but it is in the embryonic stages at present.

A Member thanked the Cabinet Member for the work on resurrecting the plants in St John's Park in time for the festival. The Cabinet Member confirmed that contractors use grey water to maintain the parks in general throughout the year.

#### Report of the Cabinet Member for Community

The Cabinet Member noted that the Board of the NHS Horsham and Mid Sussex

CCG recently met (and held their AGM) and he thanked Cllr Holden for his question on the Silverdale GP practice. He noted that the CCG has a tight spending reduction programme in place.

He highlighted that recently there has been another instance of a licensed taxi driver refusing to transport a disabled passenger, despite having an adapted vehicle and he stressed that the Council will use its powers to ensure that this type of behaviour does not continue.

Regarding Disabled Facilities Grants (DFG's), he confirmed that since 1 April 2018, the Council has approved 72 DFG's, and is likely to achieve over 250 in the year. A County-wide DFG coordinator is being appointed to ensure successful delivery across the District and County and the work is an excellent example of partnership working with West Sussex County Council, the District and Borough.

Similarly, he acknowledged the 1<sup>st</sup> Birthday celebration of Haywards Heath Age UK which is a fine example of what good community engagement and partnership work can achieve.

A Member expressed concern regarding the provision of care for older people in the District, as Clarion Housing plan to remove night time care in Marten House and the Disabilities Trust wish to close The Kleinwort. With regards to Marten House, the Cabinet Member deferred to the Cabinet Member for Housing and Planning who has received a briefing paper on the issues which will be shared with Members when complete. There is a meeting arranged on the subject and it was asked that Cabinet Members encourage Clarion to attend, as they have currently declined.

The Cabinet Member for Community noted the valid points raised by the Member and highlighted that the CCG has a recovery plan in place to address a £39m deficit and have given assurances that they will achieve it. He noted that health is not the Council's direct responsibility but confirmed that the Council will continue to represent the needs of residents. However, it was imperative to further support our Health and Wellbeing team in order to provide assistance, particularly in areas such as fall and diabetes prevention. We ought to encourage the use of a range of other personnel such as pharmacists, to deliver health care more effectively. He drew Members attention to a Health and Care conversation being held in Clair Hall in the next few weeks and expressed a wish for patients to be acknowledged more strongly in the CCG's plans going forward.

#### Report of the Cabinet Member for Housing and Planning

The Cabinet Member confirmed that a new version of the NPPF has just been published this week.

He confirmed that following the Scrutiny Committee and Cabinet's approval, the Temporary Accommodation Project Group (comprising staff from Housing Services, Corporate Estates, Legal Services and Finance) are taking forward the project to acquire properties within Mid Sussex to use as temporary accommodation. A Temporary Accommodation Management Officer is being recruited with the aim to be in post by October. If any properties are acquired or leased in the mean time they will be managed between Housing Services and Corporate Estates.

He noted that an LGA report on Housing, Planning and Homelessness provides some interesting facts. Since 2011 only 1 in 5 social homes sold under the right to buy have been replaced. In response to a Member's query, he will look into where

the money received for such sales is being directed. There are also 77,000 households in temporary accommodation nationally. Nationally Councils are approving 9 out of 10 planning applications and there are currently 423,000 homes with planning permission that have not been built.

He highlighted that the Planning Department continues to perform above targets and there has been a reduction of 28% in appeals received between April and June.

In response to questions from Members, he reiterated his commitment to challenge the decisions made relating to Marten House, and on a separate matter confirmed he would look into how the Council can enforce the removal of the yellow housing signs that are being left up around the District.

**13. QUESTIONS FROM MEMBERS PURSUANT TO COUNCIL PROCEDURE RULE 10.2**

None.

The Meeting was closed at 8.19 pm.

Chairman

## 7. AMENDMENT TO THE HACKNEY CARRIAGE AND PRIVATE HIRE LICENSING CONVICTIONS POLICY

REPORT OF: Tom Clark, Head of Regulatory Services.  
Contact Officer: Yvonne Leddy Business Unit Leader Environmental Health and Building Control  
Email: [yvonne.leddy@midsussex.gov.uk](mailto:yvonne.leddy@midsussex.gov.uk) Tel: 01444 477300  
Wards Affected: All  
Key Decision No  
Report to Council

---

### Purpose of Report

- 1 Following the endorsement by the Scrutiny Committee for Community, Housing and Planning on the 27<sup>th</sup> June 2018 and an eight week public consultation to seek Council's approval of amendments to the Hackney Carriage and Private Hire Licensing Convictions Policy at Appendix 1.

### Summary

- 2 The existing Hackney Carriage and Private Hire Licensing Conviction Policy was adopted in 2015. Since then recent recommendations from the Local Government Association and a national consultation regarding Convictions Policies have highlighted the need to update our Conviction policy.

### Recommendations

- 3 **The Council is recommended to approve amendments to the Hackney Carriage and Private Hire Licensing Conviction Policy at Appendix 1 to take effect on 1st December 2018.**
- 

### Background

- 4 The Council adopted the existing Hackney Carriage and Private Hire Licensing Convictions Policy in 2015.
- 5 The purpose of the Policy is to set out the terms and conditions that will apply to those seeking licences for the Hackney Carriage or Private hire trade, so as to protect the public and help ensure they receive a good service. The policy brings together different strands of the Council's existing conditions and practices.
- 6 The current Hackney Carriage and Private Hire Licensing Policy deals with the grounds for refusal to issue or renew or to suspend or revoke Hackney Carriage/Private Hire Drivers Licences. This section contains guidelines about the relevance of criminal convictions in this process. Recent recommendations from the Local Government Association and a national consultation regarding Convictions Policies have highlighted the need to update our policy.

- 7 The Licensing Team has taken the opportunity to reword and update all sections of the convictions policy to provide clarity and consistency for all users. Appendix 1 to this report contains the full wording.
- 8 Following consideration by the Scrutiny Committee for Leisure and Community on the 27<sup>th</sup> June 2018 the amendments were published for an eight week public consultation. The list of consultees included the following:
- Local Authorities that border Mid Sussex District Council
  - West Sussex County Council
  - Elected Members of the Council
  - The hackney carriage and private hire trade licensed by the Council
  - Parish and Town Councils
  - Sussex Police
  - The Members of Parliament for the District
  - Social Services Child Protection Office
  - Local Bus and Rail operators
  - Organisations representing local businesses
  - Members of the public via the Council's web site, the local libraries and help points
  - Age UK
  - Women's Institute
  - Local disability groups
- 9 The Licensing Authority received responses from East Grinstead Town Council and Haywards Heath Town Council, who supported the changes.

### **Policy Context**

- 10 The Licensing Policy is produced pursuant to powers conferred by the Local Government (Miscellaneous Provisions) Act 1976 as amended, which places a duty on the Council to carry out its licensing functions in respect of hackney carriage and private hire vehicles.

### **Financial Implications**

- 11 None

### **Risk Management Implications**

- 12 In accordance with the Council's Risk Management Strategy, consideration has been given to the potential risks associated with the recommendations set out in this report. It is suggested that the main risk is that if the Council fails to revise the Conviction Policy it may be open to legal challenge.

### **Equality and customer service implications**

- 13 An equality impact assessment was carried out in the development of this policy and did not identify any negative impacts for customers and those protected by equalities legislation. The policy is intended to protect the public, including those who are vulnerable owing to their age or disability, and through our consultation with a range of stakeholders, including the police, we will seek to ensure we have got the balance right in this respect.



## Background papers

14 None

This page is intentionally left blank

## **Draft Convictions Policy**

### **1. Introduction**

- 1.1 The purpose of this policy is to provide guidance on the criteria taken into account by the licensing authority when determining whether or not an applicant or an existing licence holder is a fit and proper person to hold a hackney carriage and/or private hire driver or operator licence.
- 1.2 The overriding aim of the licensing authority is to protect the safety of the public. The licensing authority is concerned to ensure:
- That a person is a fit and proper person
  - That the person does not pose a threat to the public
  - That the public are safeguarded from dishonest person
  - The safeguarding of children, young persons and vulnerable adults
- 1.3 This policy provides guidance to any person with an interest in taxi and private hire licensing. In particular, but not exclusively:
- Applicants for drivers' licences
  - Existing licensed drivers whose licences are being reviewed or renewed
  - Licensing Officers
  - Members of the licensing sub-committee ('sub-committee')
  - Magistrates and Judges hearing appeals against the licensing authority's decisions
- 1.4 Where Officers have delegated powers to grant licences, they will utilise these guidelines when making a decision to grant a licence. In all other cases applications for licences will be referred to the licensing sub-committee. Whilst officers and the sub-committee will have regard to the guidelines contained in the policy, each case will be considered on its individual merits and, where the circumstances demand, the sub-committee may depart from the guidelines.
- 1.5 For renewal applications and current licence holders the guidance will not be applied retrospectively. However the policy will be applied if any additional convictions are incurred or brought to the attention of the licensing authority that would call into question a person's suitability to hold a licence.
- 1.6 There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:
- 'Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person for whom you care, to get in to a vehicle with this person alone?'

If the answer to this question (or a similar test) is an unqualified 'Yes' then the test is probably satisfied. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether this person is a fit and proper person to hold a hackney carriage or private hire driver's licence.

- 1.7 The Council will undertake whatever checks it considers necessary to ensure that licences are not issued to unsuitable people. In assessing the suitability of an applicant or licence holder, the licensing authority will take into consideration the following factors:
- Criminality
  - Number of endorsed DVLA driving licence penalty points
  - The conduct of the applicant in making the application (e.g. whether they have acted with integrity during the application process).
  - The previous licensing history of existing / former licence holders.

In addition, the licensing authority will also consider further information from sources such as, but not limited to, the Police (including abduction notices), Children and Adult Safeguarding Boards, Multi Agency Safeguarding Hub, Immigration Service, Social Services other licensing authorities, other departments within the Council, and other statutory agencies.

- 1.8 As licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. A licensed PHV or taxi driver is expected to be trustworthy. In the course of their working duties drivers will deal with cash transactions and valuable property may be left in their vehicles. Drivers may well deal with customers who are vulnerable or intoxicated and potentially easily confused. Taking drugs and driving poses an obvious risk to public safety, whilst applicants who have convictions for the supply of drugs should also be treated with considerable concern, The nature and quantity of the drugs, whether for personal use or supply are issues which will be considered carefully. As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. More than one conviction for these offences raises significant doubts as to the applicant's fitness to drive the public.
- 1.9 The licensing authority reserves the right to overturn or annul a decision that has previously been made, or refuse a renewal of a licence, where clear errors are discovered.
- 1.10 In this policy, the word "applicant" refers to either new applicants, existing licence holders who are seeking renewal and existing licence holders that are the subject of periodic auditing or having their licence reviewed by the council as part of the policy implementation process. It also includes existing licence holders who are being considered by the licensing authority by virtue of offending activity having recently come to light.

- 1.11 In this policy, the word “conviction” is to be defined as including convictions, cautions, warnings, reprimands and other relevant information.

## **2. General Policy**

- 2.1 Whilst the committee may consider that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, it would normally be expected that the applicant would be required to:
- Remain free of conviction for an appropriate period as detailed below; and
  - Show adequate evidence that her or she is a fit and proper person to hold a licence (the onus is on the applicant to produce such evidence).
- (Simply remaining free of conviction may not generally be regarded as adequate evidence that a person is a fit and proper person to hold a licence).
- 2.2 The standards and criteria set out below are those that would normally be applied to applications and licences. Each case will be considered on its own merits, and the licensing authority may depart from these criteria, however it must only do so in exceptional circumstances. The otherwise good character and driving record of the applicant of licence holder will not ordinarily be considered as exceptional circumstances.
- 2.3 Any offences committed, or unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle, concerning the use of a hackney carriage or private hire vehicle, or in connection with an operator of a private hire vehicle will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.
- 2.4 Where an applicant has been convicted of a criminal offence, the licensing authority cannot review the merits of the conviction [Nottingham City Council v. Mohammed Farooq (1998)].

## **3 Pre-requisites to making an application**

- 3.1 It is the policy of the licensing authority that every application for a licence to drive a Hackney Carriage and/or Private Hire Vehicle must be accompanied by satisfactory evidence of the following matters (and that applications that are incomplete will not be deemed to have been made until such time as they are completed) -
- That the applicant has the right to live and work in the country
  - An enhanced criminal record check and evidence that they are not on a child and/or vulnerable adult barring list
  - A certificate of their current medical fitness [to Group 2 standard]
  - That the applicant is authorised to drive a vehicle of the same classification as that which the licence will allow them to drive together with a check of any current driving endorsements held by the driver
  - That the applicant has successfully completed of an advanced driving assessment (DSA Test)
  - That the applicant has provided two personal references

- That the applicant has passed a local knowledge test
- That the applicant has sufficient ability to speak English and to understand spoken English to provide the service that they wish to be licensed for
- (For persons who seek to be authorised to drive a wheelchair accessible vehicle) that the applicant has the ability to safely load and secure wheelchair users in a wheelchair accessible vehicle whilst in their chair.

3.2 If an applicant has spent six continuous months or more overseas in the past 5 years the licensing authority would expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made.

#### **4. Appeals**

4.1 Any applicant refused a driver's licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal (Local Government Miscellaneous Provisions Act 1976, s 77 (1)).

4.2 Any applicant refused an operator licence on the grounds that the licensing authority is not satisfied he is a fit and proper person to hold such a licence has a right to appeal to the Magistrates' Court within 21 days of the notice of refusal.

4.3 Any licensee whose licence is suspended or revoked has a right to appeal to the Magistrates' Court within 21 days of the notice of suspension or revocation.

#### **5. Powers**

5.1 Section 61 and Section 62 of the Local Government Miscellaneous Provisions Act 1976 allow the licensing authority to suspend, revoke or refuse to renew a licence if the application/licence holder has been convicted of an offence involving dishonesty, indecency, violence; failure to comply with the provisions of the Town Police Clauses Act 1847; failure to comply with the provisions of Part II of the Local Government (Miscellaneous Provisions) Act 1976; or any other reasonable cause.

5.2 The Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002, allows the licensing authority to take into account all convictions recorded against an applicant or the holder of a private hire vehicle or hackney carriage driver's licence, whether spent or not. Therefore the licensing authority will have regard to all relevant convictions, particularly where there is a long history of offending or a recent pattern of repeat offending. Applicants need to be aware that, in accordance with this Act, all convictions, cautions, warnings and reprimands must be declared.

5.3 In this policy the term "disqualification" refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.

## **6. Consideration of disclosed criminal history**

- 6.1 Under the provisions of Sections 51, 55, and 59, Local Government (Miscellaneous Provisions) Act 1976, the licensing authority is required to ensure that an applicant for the grant or renewal of a hackney carriage and/or a private hire vehicle drivers' licence and/or private hire vehicle operator's licence is a 'fit and proper' person to hold such a licence. However, if an applicant has any convictions, warnings, cautions or charges awaiting trial, the licensing authority will look into:
- How relevant the offence(s) are to the licence being applied for
  - How serious the offence(s) were
  - When the offence(s) were committed
  - The date of conviction
  - Circumstances of the individual concerned
  - Sentence imposed by the court
  - The applicant's age at the time of conviction.
  - Whether they form part of a pattern of offending
  - Any other character check considered reasonable (e.g. personal references)
  - Any other factors that might be relevant for example:
    - The previous conduct of an existing or former licence holder,
    - Whether the applicant has intentionally misled the council or lied as part of the application process,
    - Information provided by other agencies/council departments
- 6.2 In this policy 'from date sentence has ended' is taken to be the date which is reached once the whole of the period as sentenced by the court has elapsed and not necessarily the length of time served by the applicant. For example, if a sentence is five years imprisonment then the date that the sentence ends will be five years from the date of sentencing – regardless of the amount of time actually served by the applicant. If the sentence is amended by a court at a later date then this new sentence becomes relevant for the purposes of this policy. The term 'since completion of sentence' is to be construed in a similar way.
- 6.3 Existing holders of driver's licences are required to notify the licensing authority in writing within seven working days of receiving a driving licence endorsement, fixed penalty notice, warning, reprimand, police caution, criminal conviction or other criminal proceedings (including their acquittal as part of a criminal case). In addition, licence holders must inform the licensing authority within seven working days of their arrest for any matter (whether subsequently charged or not). To fail to do so, will raise serious questions for the licensing authority as to the honesty of the licence holder and will be taken into account as part of any subsequent renewal applications.
- 6.4 It is an offence for any person knowingly or recklessly to make a false declaration or to omit any material particular in giving information required by the application for a licence (Section 57 Local Government (Miscellaneous Provisions) Act 1976). Where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will normally be refused.

- 6.5 Any offences or behaviour not expressly covered by this Policy may still be taken into account.
- 6.6 The licensing authority is also entitled to use other records and information that may be available to it in determining applications or an entitlement to continue holding a licence. This may include information held by the licensing authority or other licensing authorities, and information disclosed by the police.
- 6.7 Admission of guilt is required before a Police caution can be issued. Every case will be considered on its own merits including the details and nature of the offence.
- 6.8 Applicants can discuss further what effect a caution/conviction may have on any application by contacting the licensing officer in confidence for advice.

## **7. Options when determining an application/licence**

- 7.1 When determining an application or reviewing an existing licence in relation to convictions or other relevant information the licensing authority have the following options:
- grant the licence or take no further action
  - grant the licence with additional conditions
  - refuse, revoke, or suspend the licence
  - issue a warning
- 7.2 If a current licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.

## **8. Serious offences involving violence**

- 8.1 Licensed drivers have close regular contact with the public. A firm line is to be taken with those who have convictions for offences involving violence. An application will normally be refused if the applicant has a conviction for an offence that involved the loss of life.
- 8.2 Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:
- Murder
  - Manslaughter
  - Manslaughter or culpable homicide while driving
  - Terrorism offences
  - Or any similar offences (including attempted or conspiracy to commit) offences which replace the above
- 8.3 A licence will not normally be granted where the applicant has a conviction for an offence of similar offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:



- Arson
- Malicious wounding or grievous bodily harm which is racially aggravated
- Actual bodily harm
- Grievous bodily harm with intent
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault
- Violent disorder
- Resisting arrest
- Any racially-aggravated offence against a person or property
- Affray
- Any offence that may be categorised as domestic violence
- Any offence that may be categorised as stalking
- Harassment, alarm or distress, intentional harassment or fear of provocation of violence
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

8.4 A licence will not normally be granted until at least 5 years have passed since the completion of any sentence and / or licence period following conviction for an offence shown below:

- Obstruction
- Criminal damage
- Any offences (including attempted or conspiracy to commit offences) that are similar to those above.

8.5 A licence will not normally be granted if an applicant has more than one conviction for an offence of a violent nature.

## **9. Offences involving a weapon**

9.1 If an applicant has been convicted of possession of a weapon or any other weapon related offence, this will give serious concern as to whether the person is fit to carry the public.

9.2 Depending on the circumstances of the offence, an applicant should be free of conviction for 7 years (or at least 7 years must have passed since the completion of the sentence, whichever is longer), before a licence is granted.

## **10. Sexual and indecency offences**

10.1 As licensed drivers often carry unaccompanied and vulnerable passengers, the licensing authority will take a strong line in relation to applicants or existing licence holders with convictions for sexual offences. All sexual and indecency offences will be considered as serious. Applicants with convictions for sexual or indecency offences that involve a third party will normally be refused a licence.

10.2 An application will normally be refused where the applicant has a conviction for an offence such as:

- Rape
- Assault by penetration
- Offences involving children or vulnerable adults
- Sexual assault
- Indecent assault
- Exploitation of prostitution
- Trafficking for sexual exploitation
- Possession of indecent photographs, child pornography etc.
- Indecent exposure
- Soliciting (kerb crawling)
- Or **any** sex or indecency offence that was committed in the course of employment as a taxi or PHV driver
- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above.

10.3 In addition to the above the licensing authority will not grant a licence to any applicant who is currently on the Sex Offenders Register.

## **11. Dishonesty**

11.1 A licensed PHV or taxi driver is expected to be a trustworthy person. They deal with cash transactions and valuable property may be left in their vehicles. Taxi drivers are required to deposit such property with police within 24 hours. PHV drivers must pass lost property to the operator. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in licensed drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal or agreed fare. Overseas visitors can be confused by our currency and may be vulnerable to an unscrupulous driver. For all these reasons, a serious view is taken of any conviction involving dishonesty.

11.2 In general, a minimum period of 7 years free of conviction or at least 7 years from completion of sentence (whichever is longer) should be required before granting a licence. Offences involving dishonesty include:

- theft
- burglary
- fraud
- benefit fraud
- handling or receiving stolen goods
- forgery
- conspiracy to defraud
- obtaining money or property by deception
- other deception
- taking a vehicle without consent
- and any similar offences

- Or any similar offences (including attempted or conspiracy to commit) offences which replace the above

11.3 A licence will not normally be granted if an applicant has more than one conviction for a dishonesty offence.

11.4 Applicants or existing licence holders that are found to have intentionally misled the licensing authority, or lied as part of the application or renewal process, will not be issued with a licence.

## **12. Drugs**

12.1 A serious view is taken of any drug related offence. The nature and quantity of the drugs, whether for personal use or supply are issues which should be considered.

12.2 A licence will not normally be granted where the applicant has an isolated conviction for an offence related to the supply of drugs and has not been free of conviction for 10 years.

12.3 A licence will not normally be granted where the applicant has more than one conviction for offences related to the possession of drugs and has not been free of conviction for 5 years.

12.4 An applicant who has an isolated conviction for an offence related to the possession of drugs (other than for supply) within the last 3-5 years may be granted a licence, but consideration should be given to the nature and quantity of the drugs.

12.5 If there is evidence of persistent drugs use, misuse or dependency a specialist medical examination (in accordance with DVLA Group 2 medical standards) may be required before the licence is granted. If the applicant was an addict then they would normally be required to show evidence of 5 years free from drug taking after detoxification treatment.

12.6 A licence will not normally be granted if an applicant has more than one conviction for a drugs related offence.

## **13. Driving offences involving the loss of life**

13.1 A very serious view is to be taken of any applicant who has been convicted of a driving offence that resulted in the loss of life. Unless there are exceptional circumstances a licence will not normally be granted where the applicant has a conviction for an offence such as:

- Causing death by dangerous driving
- Causing death by careless driving whilst under the influence of drink or drugs
- Causing death by driving: unlicensed, disqualified or uninsured drivers
- or any similar offences

## **14. Drink driving/driving under the influence of drugs/using a mobile phone whilst driving**

- 14.1 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but he should be warned as to the significant risk to his licence status in the event of re-offending. Normally at least 5 years after the restoration of the driving licence following a drink/drug drive conviction should elapse before an application will be considered. If there is any suggestion that the applicant is alcohol or drug dependent, a satisfactory special medical report must be provided before the application can be allowed to proceed. If an applicant has more than one conviction for driving or being in charge of a vehicle while under the influence of drink or drugs the application should normally be refused.
- 14.2 Applicants should also be aware of the serious risk posed by driving whilst using a mobile phone. There is a substantial body of research (see for instance <http://www.rospa.com/rospaweb/docs/advice-services/road-safety/drivers/mobile-phone-report.pdf>) which shows that drivers who use a mobile phone suffer physical and cognitive distraction which means they:
- are much less aware of what's happening on the road around them
  - fail to see road signs
  - fail to maintain proper lane position and steady speed
  - are more likely to 'tailgate' the vehicle in front
  - react more slowly, take longer to brake and longer to stop
  - are more likely to enter unsafe gaps in traffic
  - feel more stressed and frustrated.
- 14.3 There is evidence to show that drivers who use a mobile phone have slower reaction times than those who have consumed up to the legal alcohol limit. In light of this, an equally serious view should be taken of convictions for driving whilst using a mobile phone as for driving under the influence of drink or drugs.
- 14.4 A licence will not normally be granted if an applicant has more than one conviction for an offence of driving under the influence of drink or drugs or whilst using a mobile phone.

## **15. Other Motoring Offences**

- 15.1 There are many motoring offences which attract penalty points and fines. Some of these are not necessarily a bar from an applicant being granted a licence or an existing driver retaining a licence.
- 15.2 Traffic offences such as driving without due care and attention, reckless driving, more serious speeding offences (usually dealt with by a court), or offences of a similar nature will give rise to serious doubts about the applicant's suitability to be a driving professional. An applicant with any such convictions will be required to show a period

of at least 1 year free of such convictions. For applicants with more than one offence this should normally be increased to 5 years.

- 15.3 In cases where the courts have imposed a disqualification in respect of the DVLA driving licence, the periods stated above should normally commence from the date of the restoration of the licence.
- 15.4 In this policy, the term “disqualification” refers to the period served, in order to take account of the fact that a court may reduce the period of disqualification from driving. An applicant must provide evidence in advance to prove that the court agreed a reduction in the period of disqualification.
- 15.5 In “totting up” cases where disqualification is considered by the Court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver, the licensing authority is likely to refuse a hackney carriage or private hire driver’s licence because different criteria apply. An applicant will normally be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

## **16. Licensing Offences**

- 16.1 Certain offences under taxi legislation such as plying for hire, overcharging and refusing to carry disabled persons would normally prevent a licence being granted or renewed until a period of 5 years has passed since .
- 16.2 A licence will not normally be granted if an applicant has more than one conviction for a licensing related offence.

## **17. Insurance offences**

- 17.1 A serious view will be taken of convictions of driving or being in charge of a vehicle without insurance. An isolated incident in the past will not necessarily stop a licence being granted provided he/she has been free of conviction for 3 years, however strict warning should be given as to future behaviour.
- 17.2 A licence will not normally be granted if an applicant has more than one conviction for an insurance related offence.
- 17.3 An operator found guilty of aiding and abetting the driving of passengers for hire and reward whilst without insurance will normally have his operators’ licence revoked immediately and be prevented from holding a licence for at least three years.
- 17.4 Where a specific offence is not mentioned, a suitable period will be determined by reference to offences described. The licensing authority reserves the right to refuse a licence where there are aggravating circumstances, even where these guidelines would otherwise indicate that a licence might be granted.

## **18.0 Outstanding charges or summonses**

- 18.1 If the individual is the subject of an outstanding charge or summons their application can continue to be processed, but the application will need to be reviewed at the conclusion of proceedings.
- 18.2 If the outstanding charge or summons involves a serious offence and the individual's conviction history indicates a possible pattern of unlawful behaviour or character trait, then in the interests of public safety the application may be put on hold until proceedings are concluded or the licence may be refused.

## **19. Non-conviction information**

- 19.1 If an applicant has been arrested or charged, but not convicted, for a serious offence which suggests he could be a danger to the public, consideration may be given to refusing the application or revoking an existing licence.
- 19.2 The licensing authority will take into account intelligence it receives which has not led to a conviction. This may include but not be limited to information regarding acquittals, circumstances in which convictions were quashed due to misdirection to the jury, circumstances where the decision was taken not to prosecute, situations where the person has been arrested and bailed but not yet charged, and complaints from the public. In considering the most appropriate action to take following the receipt of information), the credibility of the witness / complainant and the licence holder will be taken into account.
- 19.3 In assessing the action to take, public safety will be the paramount concern. Decisions will be taken on balance of probability.

## **20. Once a licence has been granted**

- 20.1 If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence.
- 20.2 A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning with the day on which notice is given to the driver. If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver includes a statement that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver. [Road Safety Act 2006, s 52, 2A&2B]
- 20.3 A suspension or revocation of the licence of an operator takes effect at the end of the period of 21 days beginning with the day on which notice is given to the operator.

## **21 Licences issued by other licensing authorities**

- 21.1 Applicants who hold a licence with one licensing authority should not automatically assume that their application will be granted by another. Each case will be decided on its own merits.
- 21.2 Licensees who are licensed by multiple authorities are expected to inform all such authorities of the authorities that they are licensed by and to advise each authority of any changes in this respect; and should expect those authorities to share information regarding their conduct and to take it into account as appropriate.

## **22 Summary**

- 22.1 To summarise, a criminal history in itself will not automatically result in refusal and a current conviction for a serious crime need not bar an applicant permanently from becoming licensed. As the preceding paragraphs indicate, in most cases, an applicant would be expected to remain free from conviction for 3 to 10 years, according to circumstances, before an application can be considered. However, there may be occasions when an application can be allowed before 3 years free from conviction have elapsed.
- 22.2 Any person who has committed an offence and has to wait before an application is positively considered is more likely to value their licence and act accordingly.
- 22.3 While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when assessing an applicant's suitability to be licensed. A series of offences over a period of time is more likely to give cause for concern than an isolated minor conviction. Some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.

This page is intentionally left blank