



Oadby and Wigston Borough Council

TO COUNCILLOR:

Mrs H E Loydall (Chair)	Ms C L Edmonston
R E R Morris (Vice-Chairman)	Mrs J M Gore
G A Boulter	M Griffiths
Mrs L M Broadley	P A Hings
K M A Brown	J Kaufman
M H Charlesworth	K J Loydall
Mrs E M Connell	P Swift

Dear Sir/Madam,

I hereby summon you to attend a meeting of the **LICENSING AND REGULATORY COMMITTEE** to be held in the Council Offices, Station Road, Wigston on **THURSDAY, 4 MARCH 2010** **COMMENCING** at **7.00 pm** for the transaction of the business set out in the Agenda below.

Yours faithfully

Council Offices
Wigston
24 February 2010

Chief Executive

AGENDA

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Borough of Oadby & Wigston

Licensing and Regulatory Committee

4 March 2010

Food and Health and Safety At Work Enforcement Plans 2010/11

Report of: Director of Community Services Report Number:

Author: Mr. S.J. Bruce, Head of Environmental Health

NON-EXEMPT

This report is likely to be considered while the meeting is open to press & public

Summary:

This report asks Members to approve the 2010/11 service plans for environmental health's food and health and safety at work enforcement service

Recommendations:

- (1) That the plans for 2010/11 referred to in the report be approved

Level of delegation: Committee

Wards affected:

Comments of Statutory Officers:

Head of Paid Service: None

Proper Officer for Financial Affairs: None

Monitoring Officer: None

Appendices Attached: None

Impact Assessments:

- Health) The overall purpose of these plans is to protect public health & safety
- Environment) None
- Community Safety:) These plans take account of national guidance and good practice.

Human Rights and Equal Opportunities:

Risk Assessment: Without member approved policies of this type, we are at risk of legal challenge of our competency to deliver the services. At its worst this could result in the government agencies responding by taking over the management of our enforcement services.

Commentary:

1. It is a requirement of (a) the agreement between the Foods Standards Agency and local authorities and (b) mandatory guidance under the Health and Safety at Work Act that local authorities have service plans for their food safety and health and safety at work enforcement services.
2. The Food Standards Agency (FSA) and Health and Safety Executive (HSE) expect these plans to contain information that is not included in our corporate style and therefore, as in previous years, plans to meet the needs of the FSA and HSE have been written.
3. It is also a requirement that these plans have elected member approval, a point that is checked by audit and peer review, hence the reason this report comes before members. For Members' information, this process helped towards the positive report we received from the Food Standards Agency after their audit in September 2008.
4. Both reports commit the council to providing the basic services and minimum good practice standards expected by the FSA and HSE. Should members wish to consider providing the services to a higher level, additional resources will be required.
5. As the plans amount to 40 pages, they have been distributed as last year by email and a copy placed in the members room, to give members the opportunity to read them before the meeting. Any member wishing to receive a paper copy should contact the Head of Environmental Health.

Background Papers referred to in compiling this report: Food Standards Framework Agreement, Section 18, Health and Safety at Work, Etc. Act 1974 – Mandatory Guidance.

SJB/JEM
9.2.10

1 Introduction

As part of the Legal and Licensing Section's service delivery plan objectives, the Section aims to undertake a minimum of three taxi check operations in each financial year.

These checks are carried out in association with the Police and Department of Transport vehicle inspectors and are aimed at ensuring that licensed hackney carriages and private hire vehicles and their drivers meet safety standards. The vehicle checks are in addition to the twice yearly mechanical examinations, that licensed vehicles have to undergo as a condition of their licence.

I have been asked to bring this report to Committee, in order that the present level of such checks can be reviewed, having regard to the results of these exercises.

2 Information

Results of the taxi checks over the last three years are summarised in the table at Appendix 1 to this report. It can be seen that during this period there has been an average of 14.29% of vehicles that have failed checks because of mechanical problems of a severity that has prompted the Department of Transport engineer to issue immediate prohibition of driving notices.

These results are disappointing and it shows a need for the Council to perhaps bring additional pressure to bear on licence holders to ensure that their vehicles are maintained to a satisfactory level at all times, in the interests of public safety.

3 Financial Implications

Officers currently look to undertake two evening and one daytime taxi checks each year, using the Council's vehicle workshop facilities at the Wigston Road Depot in Oadby.

Evening taxi checks cost more to run than daytime checks. No charge is made for the use of Police during daytime operations and there are no additional officer costs associated with daytime checks either. For evening checks, we have to make special arrangements for the exclusive use of two Police officers. Council officers' overtime costs must also be met.

The costs of undertaking taxi checks to the existing level, i.e. two evening and one daytime check, are as follows:-

				£
1	x	Daytime taxi check	-	0
2	x	Evening taxi checks (@ £720)	-	1440

		Annual cost	-	1440

In the Committee's budget for the 2010/2011 year, an amount of £1500 has been provided to cover the costs of these checks.

Although officers could include additional daytime checks into the programme without additional costs, funds would have to be found to provide for any additional evening check

Background Papers referred to in compiling this report:

Taxi Checks –**Table Showing Percentage of Vehicle Mechanical Failures***

Test Date	Total Tested	No. of Fails	% Failures
20 Apr 2007	18	3	16.66
30 Nov 2007	23	5	21.74
15 Feb 2008	16	5	31.25
14 May 2008	7	0	0.00
05 Dec 2008	14	2	14.28
11 Sept 2009	17	1	5.88
20 Nov 2009	22	1	4.55
05 Feb 2010	15	3	20.00
Average Percentage Failure Rate:			14.29

* Faults on these vehicles were considered by Department of Transport engineers to be of sufficient seriousness to warrant their being taken off the road immediately.



Borough of Oadby & Wigston

Licensing and Regulatory Committee

4 March 2010

Policy on Vehicle Licence Fee Refunds

Report of: Chief Executive

Report Number:

Author: Legal and Licensing Assistant

NON-EXEMPT

This report is likely to be considered while the meeting is open to press & public

Summary:

Members are asked to review the Council's current policy of refunding Hackney Carriage and Private Hire Vehicle licence fees, where the vehicle is replaced during the term of the licence, and to consider the amount of refund payable in respect of the licence fee for a when the application is refused.

Recommendation:

That a policy of not refunding licence fees where a licensed vehicle is replaced or disposed of, be adopted to be effective from 1 April 2010.

Level of delegation: Delegated to Committee

Wards affected: All Wards.

Comments of Statutory Officers:

Head of Paid Service: supports report

Proper Officer for Financial Affairs: supports report

Monitoring Officer: supports report

Appendices Attached: None.

Impact Assessments:

Health: No significant impact

Environment: No significant impact

Community Safety: No significant impact

Human Rights: No significant impact

Equal Opportunities: No significant impact

Risk Assessment: No significant impact

Value for Money: A change of policy would save the Council money.

Commentary:

Section 70 of the Local Government (Miscellaneous Provisions) Act 1976 allows a Council to charge such fees for the grant of a vehicle licence to cover the reasonable cost of vehicle inspections, providing hackney carriage stands, reasonable administrative costs or other costs in connection with the foregoing and with the control and supervision of hackney carriages and private hire vehicle. This Section of the Act also allows a Council to remit the whole or part of any fee chargeable in respect of vehicle licences in any case in which they think it appropriate to do so.

The Council has a policy of refunding part of the fee paid for a Hackney Carriage or Private Hire Vehicle licence, when a licensee replaces their vehicle during the licence period. The refund is payable at the rate of £10 for each complete month that remains on the licence. The maximum that would, therefore, be refunded in respect of any single vehicle under this system would be £110.

The Council's taxi licensing service presently runs at a deficit and officers recommend Committee to review this refund policy. If a policy were adopted that did not allow such refunds then, based upon figures over recent years, the Council would save between £3,000 and £3,500 per annum.

Other district councils' in Leicestershire have been contacted and none of those that have responded have a policy of refunding on vehicle licences.

Background Papers referred to in compiling this report: None.

Local Government Miscellaneous Provisions Act 1982.

1.4 At its meeting on 15 October 2009, the Licensing Committee agreed to recommend to Council that the Council's policy be altered to consider any application for a sex establishment on its own merits. A policy therefore needs to be in place to guide the Council in dealing with any applications received.

Recommendation

That the committee approve the draft policy attached to this report to be sent out for consultation before being referred back to the council for consideration of any responses and final approval.



Oadby & Wigston Borough Council

Policy on Sex Establishments

Draft February 2010

1. Introduction

- 1.1 This document contains the policy of the Borough Council of Oadby & Wigston on how it proposes to deal with applications for sex establishment licences and the matters that it will require from licensees.
- 1.2 This policy will guide the Council when considering applications for licences. The Council will not follow this policy inflexibly but shall take all relevant factors into consideration. Each application will however be determined on its own merits.

2. Legislative background

- 2.1 Under the Local Government (Miscellaneous Provisions) Act 1982 it is illegal to use any premises, vessel or stall for the purposes of a "sex establishment" without the approval of the Local Authority. The Local Authority itself must have first adopted Schedule 3 of the aforementioned Act.
- 2.2 The Council adopted this Schedule in 1983 and declared that the appropriate number of Sex Establishments in the borough should be "Nil". The council has now resolved to remove fixed limits and consider each application on its merits.
- 2.3 There are three types of Sex Establishment licensable under the above Act, Sex Shops, Sex Cinemas and from April 2010 a new type referred to as Sexual Entertainment Venues is introduced by the Policing and Crime Act 2009.

3. Definitions of a Sex Establishment

- 3.1 A Sex Cinema is any premises, vehicle, vessel or stall used to a significant degree for the exhibition of moving pictures concerned primarily with the portrayal of, deal with, or relate to sexual activity.
- 3.2 A Sex Shop is any premises, vehicle, vessel or stall which consists to a significant degree of selling, hiring, exchanging lending, displaying or demonstrating sex articles or other things intended for use in sexual activity.
- 3.3 A "Sexual Entertainment Venue", means any premises that provide entertainment before a live audience for the financial gain of the organiser and the entertainment is "relevant entertainment". "Relevant entertainment" is defined as a live performance or display of nudity provided solely or principally for purpose of sexually stimulating any member of the audience.

4. Consideration of applications for Sex Establishments.

- 4.1 All valid applications for a Sex Establishment licence will be considered by the licensing committee or a sub panel of that committee. It will be for a Licensing officer to decide in the first instance if a valid application has been made.
- 4.2 The Act provides Local Authorities with two grounds for refusal. Mandatory grounds and discretionary grounds. Where an application falls within a mandatory ground for refusal the Council shall have no discretion but to reject the application.
- 4.3 The Mandatory grounds for refusal within the Act are as follows:

- The applicant is a person under the age of 18;
- The applicant is a person who is for the time being disqualified following the revocation of a licence;
- The applicant is 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 when the application was made;
- The applicant is a body corporate which is not incorporated in the United Kingdom; or
- The applicant is a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence of the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

4.4 The discretionary grounds for refusal within the Act are as follows

- The applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- That the applicant is merely a front for a person who would otherwise be refused a licence
- That the number of sex establishments in the relevant locality exceed the number which the authority consider appropriate for the area.
- That the licence would be inappropriate having regard to the relevant locality, or to the use to which the premises in the vicinity are put, or to the layout, character and condition of the premises in respect of which the application is made.

4.5 The Council will therefore consider each application on its merits in relation to the above grounds. The Council wish to ensure that only applicants who are suitable will be granted licences and only in relation to suitable premises. The Council will therefore consider the following grounds:

5. Suitability of Applicant:

- Any convictions or cautions of the applicant
- If a Company, any convictions or cautions of Directors of the company to ensure that the company is not being used as a front for persons who would otherwise not be licensed.
- The involvement of any other person in the operation of the premises, or prior business relationships with other people who would otherwise not be licensed by the Council.
- The experience of the applicant and their knowledge of running a sex establishment.
- Any previous licence held by the applicant, whether in this Councils area or another.

- Any report or information submitted to the council by the Police, other consultees and objectors.

5.1 The suitability of each applicant will be considered on its own merits but in cases where the applicant, or one of its members, has an unspent conviction, the Council will normally refuse the application unless they are satisfied by the applicant that there are exceptional circumstances to justify the granting of the licence.

5.2 Where an objection has been raised by the Police or another consultee regarding the suitability of the applicant the Council will in most cases defer to the experience and knowledge of the consultee and refuse the application unless they are satisfied by the applicant that there are exceptional circumstances to justify the granting of the licence.

6. Suitability of the Premises given its locality, character, other premises in the vicinity, or the character and condition of the premises.

6.1 The Council consider that it is not appropriate for a Sex Establishment to be located near to any of the following premises:

- Schools, colleges, nurseries, play areas or any other premises predominantly used for and by children.
- Any access route to and from any of the above premises.
- Any place of religious worship
- Museums, libraries, Council buildings, or other community and public buildings.
- Any community premises such as swimming pools, leisure centres, youth centres, clubs, shelters, public parks and recreational areas.
- Historic buildings and Tourist attractions
- Residential Homes
- Any premises of a similar nature to the above.

6.2 It is not considered appropriate to define a precise distance from any of the above premises as sufficiently far enough away to make a Sex Establishment suitable and each case will be considered on its own merits and in light of any consultation undertaken.

6.3 The applicant may, in order to reduce the impact on any of the above premises, undertake the following measures:

- The interior of the premises will not be visible to any member of the public passing by.
- No advertisement of products or services will be displayed externally, or in such a manner that they can be viewed externally.
- No external advertising will take place in public, including the provision leaflets, business cards or posters.
- The opening times of the premises will not coincide with the opening times of any of the above premises.

6.4 Character and condition of the proposed premises

6.5 The Council will need to be satisfied that the premises themselves are suitable for the proposed use. Before the grant of any licence the premises may be inspected by the Council, the Police or any other consultee.

6.6 Of consideration to the council will be:

- The suitability of the premises in terms of its size and location for members of the public to enter, given its proposed use.
- Are there sufficient safety measures in place at the premises, such as CCTV, and fire extinguishers.
- Are the premises adapted in such a way so as not to prevent easy and direct exit from the premises in an emergency.
- Is every area of the premises visible to staff either by sight or via internal camera systems.
- Are staff suitably trained in terms of their own and their customer's safety.
- The products or services offered and their nature.
- The proposed opening times of the premises.

7. A local Authority is permitted under the Act to grant each licence on such terms and conditions and such restrictions as they may specify. The Council has not resolved to pass regulations imposing standard conditions on licences and will consider each application on its own merits. A pool of standard conditions that are considered appropriate which the Council may refer to when deciding to grant a licence are attached as an appendix to this policy.

8. Application Process

8.1 The process for an application under the provisions of the LGMPA 1982 is as follows:

- The applicant must be over the age of 18, a resident residing in or company incorporated in the UK, and not disqualified from holding such a licence
- The applicant must submit to the Council an application containing information as may be reasonably required by the authority. A copy of the application form can be requested from the Council.
- A copy of the application must be sent to the Chief Officer of Police
- The application must be advertised within 7 days in a local newspaper
- The application must be advertised by way of public notice on the premises for 21 days beginning with the date of the application on or near the premises in a place where it can be conveniently read by members of the public.
- The applicant must submit to the council a Fee. The current fee is set at £2,000.

8.2 The Council will therefore require a completed application form containing the following information:

- The name and home address of the applicant,

- Details of any business partners or other staff involved in the business,
- If a company the registered name and address of the company, the names of directors and shareholders of the company.
- If the shareholder, or a shareholder of the company is another company then details may be required as to the membership of that company.
- If the premises are a leasehold information about whom holds the lease and if it is a head lease or sublease.

8.3 The council will also require:

- A Criminal record check issued within the last month of the applicant and or of all directors if the applicant is a company.

9. Consultation period

9.1 A consultation period will begin on the date of the application. Any objections made must be in writing and sent to the Licensing department within 28 days of the application being made stating the ground for the objection.

9.2 The Council will consult with any person it deems necessary to enable it to make an informed decision.

9.3 Of those the Council may choose to consult are as follows:

- Police
- Leicestershire Fire and Rescue Service
- Other Council departments, such as Environmental Health and Planning
- Local Residents.

9.4 The extent of the consultation undertaken by the Council will depend on the nature of the premises, the locality of the premises, any previous licence granted by the Council in respect of the premises and the applicant, and any previous trading history of the premises.

10. Duration of a Licence

10.1 Any licence granted by the Council will have the duration of one year from the date of grant.