Crawley Borough Council

Minutes of Licensing Committee

Wednesday, 17 August 2022 at 7.00 pm

Councillors Present:

I T Irvine (Chair)

Z Ali (Vice-Chair)

M L Ayling, J Bounds, B J Burgess, J Hart, K L Jaggard, M G Jones, P K Lamb, K McCarthy, C J Mullins, A Nawaz and B Noyce

Officers Present:

Dan Carberry	Public Protection and Enforcement Manager (observing)
Siraj Choudhury	Head of Governance, People & Performance (observing)
Ian Duke	Deputy Chief Executive (observing)
Heather Girling	Democratic Services Officer (observing)
Matt Lewin	Public Law Barrister (appointed as Legal Clerk for the Council)
Mez Matthews	Democratic Services Officer
Kareen Plympton	Team Leader Principal - Health, Safety and Licensing Services
Kate Wilson	Head of Community Services

Apologies for Absence:

Councillor D M Peck

Absent:

Councillor M Morris

1. Disclosures of Interest

The Legal Clerk advised that they had been made aware that some Councillors had been involved in matters relating to the dispute relating to the private hire operator at the concession at Gatwick Airport and some private hire drivers working at Gatwick. In light of this, the Legal Clerk advised the Committee to consider whether it had any disclosable Interests in the item of business before it. In addition, the Legal Clerk reminded the Committee that it was of fundamental importance that the

Committee remained open to listening to all the submissions put forward at the meeting and remained open to changing its mind in light of those submissions. Should any Committee Member believe they had pre-determined their position (i.e. that their mind was made up as to how they would vote prior to the meeting), they should declare as such and withdraw from the meeting.

At this point in the meeting a Committee Member raised a Point of Order, and questioned whether the Legal Clerk, who was not a Council employee but had been appointed to represent the Council for the meeting, was authorised to attend the meeting in the capacity of 'Legal Clerk'. The Committee was advised that the Legal Clerk had been properly appointed to represent the Committee and the Chair ruled that Mr Lewin be authorised to continue to represent the Council in that capacity for the meeting.

Following a query relating to pre-determination and whether the requirements and enforcement in relation to it were still in place following the Localism Act 2011, the Legal Clerk acknowledged that the rules regarding pre-determination had changed. The Legal Clerk however advised that the change did not remove the principle of pre-determination altogether and it was important that Councillors consider any matter before them with an open mind. The Legal Clerk reminded the Committee that it was a matter for each individual Committee Member to consider whether they might have pre-determined.

Councillor Jones stated they were not aware of any Committee Member, including himself, who had pre-determined their position in relation to the matter on the agenda.

Councillors Ali, Irvine, Jones, Lamb and Nawaz confirmed that they had received some form of lobbying in respect of Agenda Item 4 (Variation to the Crawley Borough Council Private Hire and Hackney Carriage Licensing Policy). In response to a concern raised by a member of the Committee, the Democratic Services Officer assured the Committee that lobbying was not classed as an Interest and would be minuted as lobbying. During the debate of the agenda item Councillor Jones informed the Committee that, whilst they had undertaken discussions at Gatwick, those discussions had not referenced teal plates nor the matter under discussion at this meeting.

The following disclosures of interests were made:

Councillor	Item and Minute	Type and Nature of Disclosure
Councillor Irvine	Variation to the Crawley Borough Council Private Hire and Hackney Carriage Licensing Policy (Minute 3)	Personal Interest – member of the Unite the Union.
Councillor Lamb	Variation to the Crawley Borough Council Private Hire and Hackney Carriage Licensing Policy (Minute 3)	Personal Interest – member of the Unite the Union.

2. Minutes

The minutes of the meeting of the Licensing Committee held on 20 June 2022 were approved as a correct record and signed by the Chair.

3. Variation to the Crawley Borough Council Private Hire and Hackney Carriage Licensing Policy

The Committee considered report HCS/043 of the Head of Community Services which advised that the Chair of the Licensing Committee had called the extraordinary meeting and requested that the Committee consider a variation or temporary suspension to section 2.11.6 of the Crawley Borough Council Private Hire and Hackney Carriage Licensing Policy 2022-2026 ('the Policy'), which related to the colour of vehicle licence plates that must be displayed by licensed private hire vehicles when undertaking work exclusively from Gatwick Airport. The Team Leader Principal for the Health, Safety and Licensing Team presented the report in full to the Committee.

Although constitutionally there were no public speaking rights at the Licensing Committee, the Chair had used their discretion to grant permission to several relevant parties who had requested to address the Committee on the matter before it.

Mr Nick Venes (a licensed driver and Unite the Union representative) addressed the Committee and made the following points:

- Demand at Gatwick had been high recently due to cancelled flights, staffing issues and train strikes, but that demand had now reduced and was expected to remain at the current level.
- Drivers were happy with how the Council regulated licences and were proud to be so highly regulated as it reflected their professionalism.
- 90% of the drivers who serve Gatwick Airport lived and worked within the Borough.
- The teal plates set those private hire vehicles which serve Gatwick apart from those which serve the remainder of the town. That differentiation meant they could be easily identifiable.
- Gatwick was a different entity from other private hires and hackney carriages as the number of passengers from Gatwick fluctuated across the seasons.
- Suspending the teal plates would help going forward, and as such, it was requested that the Committee take that into consideration when making its decision.

Mr Ahjaz Ali (a licensed driver and Unite the Union representative) addressed the Committee and made the following points:

- They had been in dispute with the operator at Gatwick Airport and were of the view that recruiting additional drivers whilst in dispute was unfair.
- An unusually high number of teal plates had been issued recently in a short space of time which undermined the trade. The reasons for that were questioned and it was suggested that the issuing process had been sped up.
- The likelihood of drivers making a living wage and recouping the investment of their vehicle was at risk if they had to share the work with a lot of other drivers, especially as the level of trade at Gatwick during the winter months was minimal.
- The majority of the drivers at Gatwick lived locally. Those drivers supported the local economy and local residents.
- Raised concern as to how the new drivers had been introduced into Gatwick.
- Requested that an immediate suspension be put in place and a cap on the number of plates issued be applied.
- Proposed that temporary plates (to cover the summer period) could be introduced which could then revert back to yellow plates following peak season.

Mr Mohammed Azzaoui (a licensed driver and Unite the Union representative) addressed the Committee and made the following points:

- There was a significant level of stress for the drivers at Gatwick recently, particularly as a result of the private hire operator at Gatwick.
- The private hire drivers were attempting to find a solution to the dispute with the operator at Gatwick.
- Drivers had experienced difficult financial times recently under the current operator at Gatwick.
- Teal plate drivers had contacted Councillors and officers to try to seek help to support their colleagues.
- It appeared that Gatwick's private hire operator had oversold itself when it secured the contract at Gatwick with the drivers paying the consequence for that.
- Questioned why a large number of teal plates had been issued in recent weeks.

The Democratic Services Officer then read out a statement on behalf of Emma Rees, the Head of Real Estate and Surface Access for Gatwick Airport, which provided the following points:

- Disappointment that there had been no consultation or contact with Gatwick Airport Limited on the matter.
- Gatwick Airport had recently been contacted by a number of Councillors regarding the current dispute between the operator and the drivers at Gatwick.
- The teal plates had been introduced in 2013 to ensure the safety of the airport and passengers following consultation with Gatwick Airport and Sussex Police. That position had not changed.
- Asserted that a change to the Policy, either temporary or permanent, should not be considered.
- The report appeared to be premature as the introduction on 'dual plates' was due to be considered by the Committee at an upcoming meeting.
- In order to meet passenger demand and delivery of the Service Level Agreement it was necessary to recruit additional drivers. The number of passengers using Gatwick Airport had increased and was set to continue rising.
- Suspending the issue of teal plates would result in the recruitment of drivers with yellow plates which would jeopardise the security at Gatwick as the vehicles would not be easily identifiable.
- Requested that the status quo remain and that proper engagement with the Airport and Sussex Police be undertaken prior to any decision being taken.

Peter Bailey, Head of Operations and Commercial at Gatwick Cars, addressed the Committee and stated the following points:

- The original contract had bid on the basis that the drivers at Gatwick wanted to be 'workers' and paperwork had been issued on that basis. The drivers had now informed the operator that they wanted to remain as self-employed, the operator did not have an issue with this. The operator had been dealing with Unite the Union and was due to go to mediation to resolve the matter.
- Recruitment policies for private hire drivers were usually based on passenger numbers and Service Level Agreements and not the views of the drivers themselves.
- Several Councillors had contacted the management at Gatwick Cars to make representations on behalf of the drivers and suggested that the comments made by those Councillors could demonstrate a perception of bias against the operator and called into question those Councillors' ability to make a fair-minded decision.

- Mr Bailey suggested that the Council/Councillors were interfering in matters relating to the dispute between the operator at Gatwick and the drivers and putting pressure on the company to influence its business decisions.
- The need for additional teal plates could be made on economic grounds. The company wanted to increase local employment opportunities, support the local economy and create new jobs.
- The extraordinary meeting had been called by the Chair of the Licensing Committee to consider a variation to the Policy following receipt of communications by the Council with regard to the dispute. Those communications had not been shared with all parties and it was requested that that information be disclosed to the operator.

Ian Miller, Non-Executive Director at Gatwick Cars, addressed the Committee and made the following submission:

- Questioned the need for calling the extraordinary Committee meeting as it related to the current dispute between the operator at Gatwick Airport and its drivers.
- Limiting the number of teal plates would constrain the operator's ability to fulfil the needs of passengers at the Airport and limited the opportunity for local drivers to obtain a teal plate and work at Gatwick.
- Should there be a surplus of drivers during the winter period those drivers could swap their teal plate for a yellow plate as that was a quick and efficient process.
- Teal plates had been introduced in 2013 following consultation with the Council, Gatwick Airport and Sussex Police to improve safety and security at the Airport.
- Suspending or abolishing teal plates would undermine the sound reasons and rationale for introducing the teal plates. It was a contractual obligation of the operator to use teal plates.
- There had recently been a huge increase in passenger numbers at Gatwick and it was believed that would rise. It was necessary to recruit new drivers at the Airport as a matter of urgency in order to fulfil the conditions of the Service Level Agreement with Gatwick and reduce passenger waiting times. Those service levels had not been met in recent weeks due to a shortage of drivers.
- Self-employed drivers working for the operator had been informed of the need to recruit and had requested they be inputted in the process. That request had been politely declined as it was a matter for Gatwick Cars Management team.
- Questioned the timing of the Extraordinary Committee meeting given the recent lobbying by certain Councillors in an attempt to resolve the dispute between the self-employed drivers and Gatwick Cars Management team.

Prior to the Committee discussing the matter, the Legal Clerk reminded the Committee that it had resolved to adopt the Private Hire and Hackney Carriage Licensing Policy at its meeting on 1 March 2022 (minute 4 of that meeting refers) following full public consultation and that the revised Policy had come into effect in April 2022. The Legal Clerk then reiterated that the Committee's primary concern, as set out in the Policy, was public safety. The Committee was therefore advised to consider the information before it and remain mindful that any change to Policy would need to be justified by public safety reasons.

In response to questions raised by the Committee the Team Leader Principal for the Health, Safety and Licensing Team:

- Advised that the employment status of the private hire drivers (i.e a 'worker' or 'self-employed') was an employment law matter and was not a consideration for the Committee.
- Clarified that the Unmet Demand Survey only applied to Hackney Carriages and it was unlawful to restrict the number of private hire licences in that way. The Council, as Licensing Authority, was required to issue a private hire licence unless a private hire driver was deemed not to be 'fit and proper' or a private hire vehicle did not meet the required specification.
- Informed the Committee that the Council had powers to suspend or revoke a licence in certain situations and that any such action was carefully documented and considered against the 'fit and proper' guidance to protect the public. The Licensing Team regularly considered such cases and, in addition to suspension and revocation, issued penalty points to drivers when appropriate.
- Advised that a Magistrate's Court decision meant that private hire vehicles serving an airport did not require door livery but had teal rear licence plates and "top boxes" to aid identification.
- Informed the Committee that the issuing of teal plates was an administrative function and was not related to the 'fit and proper' test. Should the Committee be minded to suspend the issuing of teal plates, when a driver applied for a teal plate the Council would legally be required to issue yellow plates in order to allow drivers to continue operating. It could not cease to issue licences. Thereby the Council would operate a 3-tier system: white/blue plates for hackney carriages, yellow plates with full livery for non-airport private hire vehicles, and yellow plates with no livery for airport private hire vehicles. Concern was expressed that the lack of livery for yellow-plated private hire vehicles serving the airport would make enforcing the trade more of a challenge for the Council and Sussex Police and that the teal plates had been instated upon the request from Gatwick Airport Limited (GAL), Sussex Police and the Council as Licensing Authority for regulatory purposes, to aid identification and promote public safety.
- Reassured the Committee that the speed at which teal plates were issued had not been expedited recently. When all the relevant information was submitted with an application, a plate was usually issued within 1-2 days. The Licensing Team aimed to issue plates as soon as practicable given it affected those individuals' livelihoods. That timeframe had remained unchanged.
- Informed the Committee that 27 applications to convert a yellow plate to a teal plate had been made since 1 July 2022. Of those, 15 had been issued and 12 had been named but were awaiting further information before they would be allocated.
- Explained it was difficult to provide a comparison between the number of plates issued recently to that of previous years as the industry had been affected by the Covid-19 pandemic, a consequence of which was that a number of drivers had sought alternative employment. The Committee was informed that the Council currently licensed approximately 890 licences, prior to Covid that figure had been approximately 1200.
- Advised that Gatwick Cars was licensed to operate 101+ private hire drivers, it currently operated 276 drivers and had operated more drivers pre-pandemic. Gatwick Cars had advised it was seeking to recruit more drivers to meet demand.
- Reiterated that changing a plate was an administrative function. Transferring from a yellow to teal plate was not uncommon and most drivers applying for a teal plate were not applying for a new licence but replacing a yellow plate with

a teal one instead. It was common for private hire drivers who had been working from Gatwick Cars' sister company EVO with a yellow plate to move to work directly for Gatwick Cars with a teal plate. That was a business decision taken by Gatwick Cars.

- Reiterated that the primary and over-riding consideration of the licensing regime must be public safety, and identifying features, such as the colour of rear plates and other signage was key to fulfil that requirement.

The following motion was then proposed by Councillor Lamb and seconded by Councillor Ayling:

"1) That the Private Hire and Hackney Carriage Licensing Policy be modified to enable the council to suspend the issuing of any category of licence.

2) That the power to take decisions around the suspension of issuing licences be delegated to a Licensing Sub-Committee.

3) That any such meeting of the Licensing Sub-Committee shall reflect the political make-up of the Council.

4) That the power to call the Sub-Committee be delegated to the Chair of the Licensing Committee.

5) That any Constitutional changes stemming from this decision be brought forward at the earliest opportunity."

In submitting this motion Councillor Lamb reminded the Committee that its primary function was to ensure public safety and advocated that, due to a 'gap' in the Policy, Licensing Officers currently lacked the power to suspend the issuing of new licences. Councillor Lamb stressed that there had been cases when the lack of power to suspend licences had affected a Council's ability to act quickly to address an urgent public safety concern. The motion intended to rectify the fact that the current situation could potentially lead to a future safeguarding issue. Issuing licences was a non-Executive function, and as such the function could be undertaken by the Committee itself or Full Council, rather than being delegated to officers. Councillor Lamb asserted that suspending the issue of plates would not breach legislation, and best practice did not specify that the responsibility had to be taken at officer level. Councillor Lamb reminded the Committee that the Council's Cascade System allowed controversial applications to be taken further up the cascade rather than by officers. Councillor Lamb concluded that his proposed motion balanced the democratic process with the Council's moral obligations as well as futureproofing the Policy.

The Committee then discussed the proposed motion. Several Committee Members supported the proposed motion and were of the opinion that different levels of decision making would be advantageous.

Several Committee members were concerned that the Committee appeared to be involving itself with the business of the private hire operator and Gatwick and were conscious that the Council should not be seen to attempt to limit the number of private hire licences as it was not legal to do so. In addition, several Committee members were concerned that, should the Committee suspend the issuing of teal plates, any licence issued for Gatwick would be a yellow plate but would not need to be liveried, potentially making enforcement more difficult and that public safety should be the key concern. Dissatisfaction was also expressed that an Extraordinary Committee meeting had been called and some were of the view that the item under

consideration, which related to decision making routes and delegations, should have been tabled for a future scheduled meeting when there had been time to prepare a full report which included more detailed analysis of the advantages/disadvantages of suspending plates. A question was also raised as to why some Committee members were seeking to revise the Policy which had been approved unanimously by the Committee in March 2022. Unease was expressed by some Committee members that unnamed Councillors had been involved in discussions regarding the private hire drivers' dispute with Gatwick Cars and that, should those Councillors be members of the Committee, that situation could have left doubt as to those Councillors' ability to keep an open mind when considering the matter.

In response to a request from the Committee, the Legal Clerk provided legal advice and reminded the Committee that it would be unlawful for the Council to cease issuing plates, the Council could only refuse to issue a plate if a driver was deemed not to be 'fit and proper' or if the vehicle did not meet the required specification. The Legal Clerk also advised that the Constitution did not currently permit a Sub-Committee to take decisions around the suspension of issuing licences and, as the Constitution currently stood, any such decision would need to be taken by the Licensing Committee itself.

The Committee noted that a report would be submitted to the next Governance Committee to consider the consequential changes to the Constitution necessary to accommodate the resolution, if passed, with that Committee making a recommendation to the Full Council in relation to any proposed Constitutional changes. Concern was expressed that any changes to the Policy could take effect immediately with limited opportunity to scrutinise the consequences of the Policy change.

Following a vote on the proposed motion, the motion was declared to be carried.

RESOLVED:

1. That the Private Hire and Hackney Carriage Licensing Policy be modified to enable the Council to suspend the issuing of any category of licence.

2. That the power to take decisions around the suspension of issuing licences be delegated to a Licensing Sub-Committee.

3. That any such meeting of the Licensing Sub-Committee shall reflect the political make-up of the council.

4. That the power to call the Sub-Committee be delegated to the Chair of the Licensing Committee.

5. That any Constitutional changes stemming from this decision be brought forward (for consideration by the Governance Committee with a recommendation to the Full Council) at the earliest opportunity.

Clarification Note by Head of Governance, People & Performance:

Based on the resolution (above) and then the subsequent communications, the following clarification is provided for information:

- *The purpose was to change the Licensing Policy (and consequentially the Constitution) to allow a Licensing Sub-Committee to suspend the issuing of*

any category of licence. That would solely apply to Hackney Carriage (driver and vehicle) licences and Private Hire (driver/vehicle/operator) licences.

- *Day-to-day business (i.e. the issuing, renewal and suspension of individual licences) will continue as normal save for any suspension decisions which might be made by the Licensing Sub-Committee.*

Closure of Meeting

With the business of the Licensing Committee concluded, the Chair declared the meeting closed at 8.42 pm

I T Irvine (Chair)