

BIRMINGHAM CITY COUNCIL

**LICENSING AND
PUBLIC PROTECTION
COMMITTEE
23 OCTOBER 2017**

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON MONDAY 23 OCTOBER 2017 AT 1000
HOURS IN COMMITTEE ROOMS 3 AND 4
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Alex Buchanan, Bob Beauchamp, Ian Cruise, Liz Clements, Des Flood, Carol Griffiths, Nagina Kauser, Changese Khan, Chaman Lal and Mike Leddy.

NOTICE OF RECORDING/WEBCAST

913 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs except where there were confidential or exempt items.

APOLOGIES

914 Apologies were received from Councillors Nawaz Ali, Lynda Clinton, Basharat Dad and Rob Sealey.

MINUTES

915 The Minutes of the meeting held on 13 September 2017, having been previously circulated were confirmed as a correct record and signed by the Chairman.

EMISSION STANDARDS AND SUITABILITY FOR USE OF BIRMINGHAM HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 1)

Chris Neville, Head of Licensing, made introductory comments relating to the report recommending minimum vehicle emissions standards for hackney carriage and private hire vehicles as part of a range of measures that the City is undertaking in order to respond to the need for Birmingham to improve air quality in the City.

In response to questions from members, he explained that: Euro 4 for petrol engines was selected for petrol engines as this was the minimum emissions standard for petrol engines and with the lowest impact for Hackney Carriage (HC) and Private Hire (PH) vehicles' drivers over the longest possible time; the area for the Clean Air Zone (CAZ) had not yet been identified by the City Council and no decisions had been made regarding charging/non-charging residents entering the clean air zone had not been agreed – work was being undertaken to identify the worst hotspots for pollution within the city. He stressed that as much notice as possible needed to be given to drivers to bring their vehicles to the standards required by the EU Air Quality Directive and the UK Plan. Taxis were one of the biggest methods of travelling to work and DEFRA would be providing funding to help with changes and Birmingham Licensing would bid for funding as soon as it was made available.

He further responded that the emissions standards policy for HC and PH vehicles would be 1 of many strands across Birmingham regarding air quality involving cross-cutting issues affecting both the public and private sector and in providing information to Birmingham residents. Changes needed to be place for December 2019 in a rapidly changing landscape working with the government to reduce emissions.

The Chair advised the Committee that everything possible had been done to limit the impact on drivers and work was being done in other committees regarding poor health as a result of poor air quality - the Air Quality Strategy Group was composed of Members from Transportation, Health and Highways drawing different strands of policy across all areas. Furthermore, that the Air Quality Plan would be brought to the attention of the public and full Council as soon as possible.

Further responses to questions from the Committee by Mr Neville included reference to: the fact that talks regarding emissions and the likelihood of emissions standards being implemented had commenced 2 years earlier and it had taken 18 months to solidify a policy; it was hoped that the government would be making more money available to retrofit vehicles to improve vehicle exhaust emissions, including LPG conversions. 65 HC vehicles had been successfully converted from diesel engines to LPG during 2016 and 2017 funded by the department of Transport as part of a pilot project. Only 1 garage had been used to carry out the conversions, however if more money was

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made available and other garages met the required criteria and the work was carried out well and safely then more garages would be available for the retrofits.

Mr Neville noted members' concerns regarding emissions from private and commercial vehicles and the possibility of drivers purchasing vehicles when standards may change again, but stressed that there was a requirement from DEFRA for standards that HC and PH vehicles **had to** adhere to in order to comply with the CAZ requirements – separate arrangements would need to be looked at regarding other vehicles. He however, highlighted the need for drivers to plan ahead when changing their vehicle and not to buy a vehicle that only met the lowest standard for emissions given the possibility of future changes and pointed that he would like to be in a position of providing drivers with a medium to long term policy on vehicle emissions standards dependent on national level.

Following this comments and questions on the report were received from the Taxi Trade Associations:

- The CAZ would involve ring roads within the city therefore having a major impact of everyone.
- That the consultation discussions 2 years ago had not included vehicle emissions – licensing had been aware of this since 2010 why had drivers not been informed earlier?
- There were lots of issues with the HC vehicles that had been converted to LPG.
- That 77% of PH and 94% of HC vehicles would need to be replaced or retrofitted to meet the standards having a huge impact on the taxi trade and the death of 'the black cab' in Birmingham.
- If Licensing Committee would be approving the retrofit that the trade had identified?
- That the costs for changing vehicles were prohibitive for most drivers.
- That the World Health organisation stated that replacing diesel vehicles with petrol did not make any difference to vehicle emissions.
- That drivers were being penalised without a Clean Air Policy being in place.
- That a retrofit solution had been identified, costing only £100 per vehicle which was still waiting for approval by DEFRA which had been tried and tested by the trade and would solve many problems.
- That the percentage of pollution by taxis was only 25 and would not reduce emissions to the Euro standards.
- Buildings in the city restricting air flow.
- That all the building work in the City requiring taxis to take longer?
- The proposed map of the CAZ?

In response to these Mr Neville stated that:

- In 2010 Licensing had had discussions with the trade regarding air quality but real targets had only been set in the last 2-3 years by the EU and the UK government.

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- The CAZ had not been identified and it was not the committee's job to define it.
- That the retrofit solution put forward by the trade would only be applied if it met the Clean Vehicle Retrofit Accreditation Scheme (CVRAS) set up by DEFRA.
- That further funding would be available for LPG conversions.
- That drivers would be able to hire vehicles.
- Resources would be put in position to help drivers as much as possible.
- That the Health & Overview Scrutiny Committee had determined that vehicle emissions made the most difference to Air Quality in Birmingham.
- That there was no scope to move the policy beyond the date in the report.
- That building restrictions were the responsibility of planning.
- Transportation and Highways would need to look at congestion due to building work.

The Chair put the recommendations to the meeting and by 9 votes for to 2 votes, it was:-

916

RESOLVED:-

- (i) That Birmingham City Council will revise its current Policy on the approved vehicle types for use as Private Hire Vehicles and Hackney Carriage Vehicles whereby it will not license or permit the use of any vehicle as a hackney carriage or private hire vehicle after 31 December 2019 that does not meet the minimum emission standards of Euro 4 for petrol engines, Euro 6 for diesel engines or is Ultra Low Emission or a Zero Emission Capable Vehicle.

The Chair put the recommendations to the meeting and by 9 votes for to 2 vote, it was:-

RESOLVED:-

- (ii) That the policy described in paragraph 2.1 of the report will apply to the grant of new vehicle licences and the renewal of existing licences likewise.

The Chair put the recommendations to the meeting and by 11 votes for, it was:-

RESOLVED:-

- (iii) That officers are asked to prepare a separate report to consider a medium to long-term emissions policy in respect of hackney carriage and private hire vehicles beyond 31st December 2019.

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- (iv) That officers are asked to prepare a separate report for this Committee at the earliest opportunity to consider an absolute age policy in respect of hackney carriage and private hire vehicles.

The Chair put the recommendations to the meeting and by 10 votes for to 1 vote, it was:-

RESOLVED:-

- (v) That Birmingham City Council will continue to license hackney carriage vehicles that have been converted to LPG under the department for Transport funded scheme until December 2025, subject to them passing a strict annual inspection to verify their mechanical and structural condition, the criteria for which will be developed in due course; and subject to any intervening local or national policy decisions that might take precedence.

The Chair put the recommendations to the meeting and by 11 votes for, it was:-

RESOLVED:-

- (vi) That Birmingham does not propose to license any vehicles, or vehicles that are not wheelchair accessible as hackney carriages.
- (vii) That outstanding minute 651 (iii) of 20.04.16 be discharged (That officers engage with the neighbouring West Midlands Licensing Authorities to discuss proposals for a regional emissions standard for hackney carriages and private hire vehicles).
- (viii) That a short-life officer/member working group be created to consider what criteria or specification Birmingham should adopt for engine sizes or power outputs for electric vehicles and for that working group to make recommendations to the Licensing & Public Protection Committee.

At 1200 hours the meeting was adjourned.

At 1215 hours the meeting was reconvened.

BIRMINGHAM CITY COUNCIL ACT 1990 ESTABLISHMENTS FOR MASSAGE AND/OR SPECIAL TREATMENTS: BIRMINGHAM THAI THERAPY, 1159 BRISTOL ROAD SOUTH, NORTHFIELD, BIRMINGHAM, B31 2SL GRANT OF LICENCE

The following report of the Acting Service Director of Regulation and Enforcement was submitted:-

(See Document No. 2)

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The following people were in attendance for the hearing:

On behalf of the Applicant

Ms Patricia Ballinger – Applicant

Mr Heath Thomas – Solicitor

Those making Representations

Ms Sarah Lavender – Licensing Enforcement Officer

Mr Anthony Denby – Local Trader

Councillor Ian Cruise made a declaration that Birmingham Thai Therapy was in his ward but that he had not visited the premises.

David Kennedy, Licensing Section, made introductory comments relating to the report.

Mr Heath Thomas and Ms Ballinger made the following comments in support of the application and in response to questions from Councillors;-

- Ms Ballinger was a mature individual with 19 years' experience of both working in the leisure sector and in a regulated sector including teaching and swimming. She also had a private security licence and was therefore able to work within rules and within the standard conditions for a special licence.
- That Ms Ballinger had displayed the notice for the application at the site and apart from those present there had been an absence of responses from any other authority. West Midland Police in particular, (who would be intelligence led as to the character of an individual) had raised no objections – suggesting that they deemed Ms Ballinger as of good character, suitable to operate premises.
- That with regard to the history of the premises – Ms Ballinger had had no dealings with either the management or customers or the previous of the premises.
- Ms Ballinger was in the process of obtaining a 3 year lease for the building – which would be completed if the application for the licence was approved.
- This would be a ground floor premises with a reception area and 3 treatment rooms, bespoke massage tables, washing facilities with hot and cold water, showering facilities, adequate lighting and ventilation.
- The building was therefore fit for purpose, with the premises equipped to an appropriate standard with equipment for special premises.

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- The brochure for the business would advertise services for male and female clients and list the treatments proposed with a transparent pricing list.
- The premises had been empty for some time and Ms Ballinger had therefore enquired about the lease
- There would be 2 other staff employed at the premises at the current time with PAYE payments. 1 was already recruited and Ms Ballinger was currently recruiting for another – however she could not confirm employment until the licence had been approved.
- Ms Ballinger would notify the authorities with details of her employees within 7 days of employment and display their qualifications at the premises. She would notify the authorities of any staff changes, not employ anyone under 17, keep a daily register of start and finish times.
- The premises would be developing other treatments in time but would only provide massage services at the current time.
- That the licence application should be granted as Ms Ballinger was over 21, there was an absence of comment from WMP regarding the application and the premises was suitable for complying with standard conditions and Ms Ballinger had not been or was involved in any improper conduct regarding the premises.
- Mr Denby's information regarding 'additional services' at the premises was hearsay evidence and therefore the evidential threshold for 'improper conduct' had not been met – there were not enough actual facts to consider this seriously.
- Notwithstanding this Ms Ballinger had had no previous association or dealings with the previous business or owner and could not be tarnished by this.
- That with regard to the suggestion of 'unannounced inspection visits by licensing enforcement Ms Ballinger would welcome these as she would be running a legitimate business in line with the conditions of the licence.
- That there was no content in Mr Denby's representation that referred to Ms Ballinger. Ms Ballinger had spoken to Mr Denby, who had genuine concerns regarding the past but was happy for the new business to continue as long as it had complied with all the licence conditions.
- It was the intention to grow the business and employ more staff in the future but in the meantime customers would have to pre-book treatments.

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- Therefore the licence should be granted with standard conditions in place.
- That the employee currently recruited was 50 years and had undergone 150 hours of training at Technical College.
- That the beds at the premises were special massage beds.
- That recruitment of employees was not restricted to any specific nationality – just requisite experience and training.
- That the premises would provide deep tissue, sports and salt scrub massages – not treating medical conditions.
- All customers would complete a medical form and raise any areas of concern with staff.
- That Ms Ballinger would be in earshot of the treatment rooms so if any of her employees received inappropriate behaviour from customers she would be there to deal with it – there would be zero tolerance on this.
- Staff would wear a uniform of trousers and a polo top.

12:52 the meeting adjourned to consider a question by a member of the committee regarding the location of her home in relation to the business, in order for her to deal with problems at the premises.

13:02 the meeting re-convened and the Committee Lawyer advised members that this question was outside the remit of the representations against the application

- That Ms Ballinger would be at the premises during all hours of opening.
- That this was an aspirational licence and the hours of opening would be dependent on bookings and walk-in trade – initially it would be a small business possibly not open for all the hours of business – if successful another employee would be engaged as a manager for cover.
- That Ms Ballinger did not know nor had any connection with the previous owner.
- That in the event of problems Ms Ballinger would engage with WMP and would also engage with the neighbourhood police team.
- That she had never had a licence revoked and none of her employees had worked at the previous establishment.
- The opening hours of the business were 10.00am to 8.00pm.

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Ms Lavender made the following comments in support of her case and in response to questions from Councillors:-

- The previous business at the premises had featured in a prostitution forum and had closed at the end of August 2017 and the new application for a special licence had been submitted at the end of August 2017.
- Ms Ballinger had stated that she no connection whatsoever with the previous business but she also had no experience in running a massage premises.
- The previous employees at the premises had also been Thai with customers who were specifically looking for Thai girls and it was widely known what the premises were used for.
- Her main concerns were regarding the therapists working at the premises being asked for 'extras' and how Ms Ballinger would deal with this given her lack of experience.
- All of her fears however had been eliminated and she also felt that the only way to get to know and to control the premises was when it was opened. She was happy that Ms Ballinger had no connection with the previous premises.
- That WMP carried out checks to ensure that employees' qualifications were valid and that employees were not being trafficked.
- That Ms Ballinger would be able to manage the opening hours.
- That her knowledge of the previous operation at the premises was based on her own experience of visiting the premises and men leaving as soon as they knew who she was, not providing full details of their names and of details posted on a website by male customers regarding the premises.

Mr Denby made the following comments in support of her case and in response to questions from Councillors:-

- He had lived in the area for 45 years and the premises in question were located near to 2 nurseries and a primary school.
- That the previous premises had had a lot of men hanging around with none of them parking their vehicles near the premises, some of whom had come into his own shop and told him that they had been next door and had been offered sexual extras whilst there.
- A 70 year old customer had also told him that she had bought a voucher for the premises for a massage and he too had been offered sexual favours.

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- He had been at his premises for 12 years and during this time there had been no police activity at Birmingham Thai Massage.
- That he had been into the premises whilst they were under the management of the previous owner but had not been offered any sexual favours.
- That the premises had often been closed for 2 hours in the middle of the day when he had seen customers entering the premises.

In summing up, Mr Denby stressed that in the past the previous business had offered sexual favours and this would not change and therefore the licence should not be granted.

In summing up, Ms Lavender that she supported the application as a genuine business opportunity for Ms Ballinger but she had concerns regarding her ability to deal with difficult customers.

In summing up Mr Thomas Emphasised that Ms Ballinger was a mature woman with clearly set out experience of working in a regulated environment and follow rules and apply standard conditions. Extra conditions were unnecessary as enforcement had the power to undertake visits at any time.

He stressed that Ms Ballinger openly welcomed engagement with Ms Lavender making unannounced visits as she would be running a legitimate business. There was no evidence at all of her having any historic connections with the previous business, she was seeking qualified staff with the appropriate qualifications – not necessarily with Thai nationality -, the premises was very suitable for the type of business to be run with aspirational business hours and Ms Ballinger would be fully engaged with the neighbourhood police team and Mr Denby to address any concerns. He concluded that the 'proof of the pudding would be in the eating' with Ms Ballinger being allowed to operate a premises legitimately to the satisfaction of Licensing, Committee and Mr Denby and accepting unannounced visits from enforcement.

At 1347 hours the Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer, the Committee Manager and Camera Operator withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1420 hours and the decision of the Committee to grant the application was announced with the Ms Ballinger being advised of the full decision and reasons as set out below in due course:-

917

RESOLVED:-

That the application by Ms Patricia Ballinger for a Massage and Special Treatment Licence in respect of Birmingham Thai Therapy, 1159 Bristol Road South, Birmingham, Northfield, B31 2SL **BE GRANTED** subject to the following Conditions:

- The Applicant's legal advisor, Mr Heath Thomas of Messrs Harrison Clark Rickerbys Solicitors, confirmed that the applicant would agree to an undertaking which would allow Birmingham City Council, Licensing Enforcement Officers to undertake and carry out unannounced inspections of the premises to ensure that the premises were operating in compliance with the Conditions of Licence, throughout the duration of the Licence;
- The Applicant must provide Birmingham City Council, Licensing Enforcement Section, Ashted Lock, Building 1 – 3 Ground Floor, Birmingham Science Park, Dartmouth Middleway, Aston, Birmingham B7 4AZ (or via email to licensing@birmingham.gov.uk) with a schedule of opening hours for the Premises at least one calendar month before the Premises open to the public and every month thereafter in advance of the following month the Premises wishes to trade throughout the duration of the Licence.
- The Applicant is reminded that in accordance with Condition 10 of the Birmingham City Council Act 1990, Standard Conditions of Licence, for Massage and Special Treatments Establishments she must adhere to the following:

“The Licensee shall notify the Council within 7 days, any change to the list of persons engaged in the provision of massage or special treatment at the establishment. If the change relates to the addition of a new person then notification must be by completion and submission within 7 days of Document MST 6.1.” being a Practitioners Personal Details Disclosure Form

The Practitioners Personal Details Disclosure form requires details of all relevant technical and professional qualifications attained by the therapist / practitioner.

The Committee has given due consideration to the information contained in the application, the written representations received and the submissions made at the hearing by the Applicant, their legal adviser and those making representations.

It carefully considered the representations made by Birmingham City Council Licensing Enforcement and a neighbouring business owner about the type of services the previous occupants had offered, but concluded that this was in no way attributable to the current Applicant. However, concerns raised by Members of the Committee themselves about the public perception of the new business were addressed by imposing the aforementioned suitable Conditions on to the Licence.

Right of Appeal

All parties are reminded that under the provisions contained within Birmingham City Council Act 1990, any applicant for the grant or renewal of a licence who is aggrieved by the terms, conditions or restrictions on or subject to which the licence is granted or renewed has a right of appeal to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

BIRMINGHAM TAXI DEMAND SURVEY

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 3)

Chris Arundel, Principal Licensing Officer, made introductory comments relating to the report and responded appropriately to Members' questions relating to comments regarding the taxi rank at New Street Station, out of town taxis, safeguarding, demands regarding the needs of customers with disabilities; average cab operating hours and the needs for taxi ranks to be placed in the right areas following redevelopment of the City Centre.

The Chair put the recommendations to the meeting and by 11 votes for, it was:-

918

RESOLVED:-

- i) That the report be noted; and
- ii) That the moratorium on the issue of any new hackney carriage vehicle licences continues for up to 3 years, subject to a further survey to establish demand within that period.

PROPOSALS TO INTRODUCE QUALITY RATING SCHEME FOR PRIVATE HIRE OPERATORS

The following report of Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 4)

Shawn Woodcock, Licensing Operations Manager, made introductory comments relating to the report and responded appropriately to comments and questions from Members of the Committee.

During the debate Members gave consideration to the need for the scheme to be compulsory rather than voluntary; including sections on driver training,

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controlling bad behaviour in drivers and providing documentation on drivers; and the ability for customers to find the best-rated operators to use.

The Chair put the recommendations to the meeting and by 11 votes for, it was:-

919

RESOLVED:-

- i) To implement a Quality Rating Scheme to coincide with the introduction of the new conditions of Licence based on the scheme at Appendix A, within the report, subject to any changes made by the Committee.
- ii) That the rating of each operator be reviewed annually in line with a programmed Operator Inspection.
- iii) Not to implement any such scheme.

CARD PAYMENTS IN HACKNEY CARRIAGE VEHICLES

The following report of Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 5)

Chris Arundel, Principal Licensing Officer, made introductory comments relating to the report and responded appropriately to comments and questions from Members of the Committee.

During the debate Members gave consideration to an improved image for the City via the use of card payments for all users; urgent consultation throughout the trade for this in time for the Commonwealth Games and the need for a speedy policy and implementation with realistic timescales.

The Chair put the recommendations to the meeting and by 11 votes for, it was:-

920

RESOLVED:-

To consider the matters raised in the report (and if convinced of the merits of the TOA proposal) instruct officers to consult with the wider trade to establish the level of support for the proposal; amongst other drivers and trade organisations and report back to this Committee.

SUPPLEMENTAL FEES AND CHARGES 2017/18 REPORT IN RESPECT OF BIRMINGHAM REGISTER OFFICE

The following report of Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 6)

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Andrea Haines, Superintendent Registrar/ Registration Services Manager, made introductory comments relating to the report and responded appropriately to comments and questions from Members of the Committee.

921

RESOLVED:-

That the additional fees and charges to take effect from 1 November 2017 in relation to Register Office Services as detailed in Appendix 1 of the report be approved.

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS TAKEN DURING AUGUST 2017

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 7)

Chris Neville, Head of Licensing, made introductory comments relating to the report.

922

RESOLVED:-

That the report be noted

FIXED PENALTY NOTICES ISSUED AUGUST 2017

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 8)

Chris Neville, Head of Licensing, made introductory comments relating to the report.

923

RESOLVED:-

That the report be noted

PROSECUTIONS AND CAUTIONS – JULY AND AUGUST 2017

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 9)

The Acting Director of Regulation and Enforcement made introductory comments relating to the report and undertook to speak to City Centre

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Management or the Management relating to an issue raised by Councillor Des Flood relating to activities taking in the City Centre shopping area where promotion companies were giving out freebies which result in an immediate littering offence.

Chris Neville, Head of Licensing, undertook to investigate a similar issue in relation to the distribution of flyers.

924

RESOLVED:-

That the report be noted

ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC PROTECTION COMMITTEE: OCTOBER 2017

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 8)

925

RESOLVED:-

That the report be noted

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 9)

The Acting Director of Regulation and Enforcement updated the dates for which reports would be forthcoming in relation to various Outstanding Minutes and it was -

926

RESOLVED:-

That Outstanding Minute No. 651 (iii) be discharged and all other Outstanding Minutes be continued.

OTHER URGENT BUSINESS

927

There were no items of Other Urgent Business.

AUTHORITY TO CHAIRMAN AND OFFICERS

928

RESOLVED:-

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 1610 hours.

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CHAIRMAN