

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE 18 DECEMBER 2019

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY, 18 DECEMBER 2019 AT 1030
HOURS IN COMMITTEE ROOMS 3 AND 4,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Nicky Brennan, Neil Eustace, Adam Higgs, Nagina Kauser, Mike Leddy, Mary Locke, Majid Mahmood, Chauhdry Rashid and Mike Sharpe.

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NOTICE OF RECORDING/WEBCAST

- 1238 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.civico.net/birmingham) and that members' of the press/public may record and take photographs except where there were confidential or exempt items.

DECLARATIONS OF INTEREST

- 1239 Members were reminded that they must declare all relevant pecuniary and non pecuniary interests relating to any items of business to be discussed at the meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.

APOLOGIES

- 1240 Apologies were received from Councillors Olly Armstrong, Simon Morrall and Martin Straker-Welds for non-attendance.

MINUTES

- 1241 The Minutes of the meeting held on 23 October 2019, having been previously circulated were confirmed and signed by the Chair.
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The business of the meeting and all discussions in relation to individual reports are available for public inspection via the web-stream.

LICENSING AND PUBLIC PROTECTION BUDGET MONITORING 2019/20 - QUARTER 2

The following report of the Interim Assistant Director of Regulation and Enforcement Interim Director Finance was submitted: -

(See Document No. 1)

David Jones, Finance Manager – Services Finance, made introductory comments relating to the report and responded to a question from the Chair relating to fixed penalty notices income.

Officers responded to questions and comments from Councillor Majid Mahmood relating to the changes referred to in paragraph 5.2 of the report, the variation on Highway's Licensing, additional work in Pest Control, impact of the opening of the new Travellers Transit site on cleaning and remediation works at unauthorised encampments, the need to ensure that the new transit site was not taken over by one family as had happened at Tameside, details of the move of the Mortuary and Coroners to Margaret Street, use of Proceeds of Crime Act 2002 (PoCA) money, work in Trading Standards around knife crime and counterfeit goods and the need for additional funding and duty of care inspections

Officers undertook to email all Members in the new year details of the new management structure and respond to the duty of care inspections in due course.

1242

RESOLVED: -

- (i) That the latest Revenue budget position at the end of September 2019 (Quarter 2) and Forecast Outturn as detailed in Appendix 1 be noted;
- (ii) that the position for the Savings Programme for 2019/20 as detailed in Appendix 2 be noted;
- (iii) that the position on Capital projects as detailed in Appendix 3 be noted; and
- (iv) that the position on reserves and balances, as detailed in Appendix 4 be noted.

TRADING STANDARDS – ILLICIT TOBACCO UPDATE

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

(See Document No. 2)

Sajeela Naseer, Head of Trading Standards and Markets, made introductory comments relating to the report and responded to a question from Councillor Mike Leddy relating to whether, in the cases referred to on pages 5 and 6 of the report, the claims were made against the individual or the business. She responded to questions from Councillor Majid Mahmood relating to the figures relating to complaints and premises inspected, the impact of Brexit and funding for the work undertaken by officers.

The Chair congratulated officers for the work undertaken in respect of illicit tobacco.

1243

RESOLVED:-

That the report be noted.

LICENSING AUTHORITY DELEGATIONS – HACKNEY CARRIAGE AND PRIVATE HIRE AND SEX ESTABLISHMENTS

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

(See Document No. 3)

Emma Rohomon, Acting Head of Licensing, made introductory comments relating to the report. She explained that she wished to amend the report by inserting a new paragraph 4.4 and renumbering paragraph 4.4 to 4.5 with the word 'this' changed to 'these' and paragraph 4.5 to 4.6. The new paragraph read as follows:

"4.4 It is also requested that, in circumstances where the Licensing Authority cannot be satisfied as to the fitness of a driver as a result of having failed or not attended their medical as required, the consideration of a suspension or revocation with immediate effect (in accordance with Section 52 of the Road Safety Act 2006) be delegated to the Head of Licensing."

The Acting Head of Licensing also advised that recommendation 2.1 should now refer to the new paragraph. Paul Lankester, Interim Assistant Director of Regulation and Enforcement confirmed that in light of the forthcoming management changes the delegations would be amended to reflect any new post titles.

Councillor Majid Mahmood indicated that he could not support the recommendations and noted in particular that as there were only a few Sexual Entertainment Venues (SEVs) applications there was no reason why they could not be heard at main Committee with 15 Members having a wide knowledge of the City. Councillor Nagina Kauser asked a number of questions querying why there needed to be changes made at this time. Councillor Mike Leddy felt that the consideration SEV applications should remain delegated to main Committee.

The Chair felt the proposals represented a better way of working but noted that the decision was up to the Committee.

The Interim Assistant Director of Regulation and Enforcement indicated that the proposals had come about in order to try and reduce the workload of the Sub-Committees. He continued by highlighting that the Committee's delegations were reviewed every year and the current proposals could be a pilot as they could be reviewed next year. In response to a query from a Member concerning delegations, he explained that matters delegated to the Sub-Committee could be passed back up to the Main Committee if they so wished. The Acting Head of Licensing indicated that regarding LPG conversions she was not aware of the outcome of the Sub-Committees' deliberation of applications for conversion of their vehicle to LPG but felt that none had been refused. By allowing officers to deal with them would remove a barrier for drivers and hopefully encourage the take up of LPG. In respect of medicals she highlighted that there was a potential safety issues in having drivers not passing or attending their medical continuing to drive and the delegation to officers would prevent the driver continuing to drive sooner. In response to a further comment from a Member the Acting Head of Licensing clarified what was been delegated to Sub-Committees in respect of SEVs set out in appendix one to the report.

Councillor Majid Mahmood indicated that he would now agree the LPG proposals but queried whether if officers did not approve an application would the driver have a right to go to a Sub-Committee. The Acting Head of Licensing indicated the refused applications would not go to a Sub-Committee, but drivers would have the normal right of appeal. Councillor Mahmood continued that he was still intending to vote against the SEV changes as there were only a handful of applications and it would be a disservice to applicants, citizens and stakeholders if applications were delegated to a Sub-Committee.

The Chair put the individual parts of the recommendations to the vote and declared the results as follows:

Recommendation 2.1 as amended by the inclusion of paragraph 4.4 outlined in the forgoing preamble carried unanimously.

Recommendation 2.2 carried by 6 votes for to 2 votes against with one abstention.

Recommendation 2.3 carried unanimously.

1244

RESOLVED:-

- (i) That the proposal to delegate, with immediate effect, the matters at paragraph 4.3 of the report and new paragraph 4.4 outlined in the forgoing preamble to Senior Licensing Officers be approved;
- (ii) That the proposal to delegate, with immediate effect, the matters at 5.3 to the Licensing Sub Committees be approved; and

- (iii) That these delegations be included within the annual Policies Procedures and Delegations Report to the Licensing and Public Protection Committee.

(Councillor Nicky Brennan wished to be recorded as abstaining from voting in respect of part (ii) of the resolution.)

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
SEPTEMBER AND OCTOBER 2019**

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

(See Document No. 4)

Councillor Majid Mahmood congratulated officer on the amount of costs recovered and sought further details relating to the case of Muhammad Hussain. Paul Lankester, Interim Assistant Director of Regulation and Enforcement, undertook to provide details of the case mentioned.

1245 **RESOLVED:-**

That the report be noted.

**PROSECUTIONS AND CAUTIONS REPORT – SEPTEMBER AND
OCTOBER 2019**

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 5)

Councillor Mike Leddy congratulated Environmental Health Officers in securing fines of over £170,000 in cases involving two prominent established companies due to their due diligence. Paul Lankester, Interim Assistant Director, Regulation and Enforcement made reference to the work of the Legal Services staff in the cases.

1246 **RESOLVED:-**

That the report be noted.

FIXED PENALTY NOTICES ISSUED APRIL – OCTOBER 2019

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 6)

Councillor Majid Mahmood felt that not enough work was undertaken in the district shopping areas such as Erdington, Northfield and Moseley. He continued whether social media was used to promote a littering prevention message to visitors. Mark Croxford, Head of Environmental Health, commented that work was undertaken in high footfall areas and he would investigate the idea of the use of social media.

1247 **RESOLVED:-**

That the report be noted.

ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC PROTECTION COMMITTEE: OCTOBER - NOVEMBER 2019

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 7)

1248 **RESOLVED:-**

That the report be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 8)

Mark Croxford, Head of Environmental Health, explained that the report on unauthorised encampments would now be submitted in February 2020.

1249 **RESOLVED:-**

That, subject to the above amendment, the Outstanding Minute be continued.

OTHER URGENT BUSINESS

1250 The Chair was of the opinion that the following items could be considered as matters of other urgent business in order to expedite consideration thereof and instruct officers to act if necessary: -

A. Birmingham City Council – Food Safety Service

1251 Mark Croxford, Head of Environmental Health, read the following statement:-

“This is a short verbal briefing to advise committee that the Chief Executive of the Food Standards Agency has made representations to the Chief Executive

of Birmingham Council over the compliance with the statutory food inspection programme.

This matter was first raised in the autumn of 2018, followed by a remedial action plan being submitted to the FSA in February 2019 by ourselves. A visit has now been made to the City Council by FSA compliance officers in October 2019.

The purpose of this brief is to advise committee of the steps that have occurred since February 2019.

- April 2019 – 5 EHOs transferred from Waste Enforcement Team to Environmental Health Team to undertake inspections
- April 2019- Draft Food Safety Plan produced and submitted to Foods Standard Agency. We have also employed Agency staff to undertake inspections of new premises that are registering as food businesses, and those that are registered and have not been inspected to date. This Agency work is still occurring and equates to approximately 4 full time equivalents for 2019-20
- July 2019- New Interim Assistant Director appointed and commenced at the City Council
- July 2019- Food Law Enforcement Plan adopted with the issue of shortfall in officers being notified to Members.
- July 2019- Budget process for 2020/2021 commenced. A budget bid for additional resources to supplement the Food Safety Service was put forward. (this is coupled with a proposal to modernise the service.)
- October 2019- the bid and modernisation proposal was approved in principal by the Cabinet/Corporate Leadership Team
- October 2019- the FSA visit was escalated to Acting Chief Executive and Leader.
- November 2019- Acting Chief Executive requested the Interim Assistant Director to produce a recovery plan.
- November 2019 – The Head of Environmental Health was authorised to start the recruitment of 6 Officers. Those adverts are published as I speak, interview dates have been set for end of January 2020.
- December 2019 - Interim Assistant Director's contract has been extended with a focus on achieving the necessary improvements to the Food Safety Plan.
- December 2019 - A further draft recovery plan considered by the Leader, Deputy Leader, Acting Chief Executive and Assistant Chief Executive. This has been agreed to be placed as a draft recovery plan before Cabinet as soon as some questions have been clarified (date confirmed as 13th January 2020).

The draft recovery plan designed to address all shortfalls within a period of 2 years was sent to the FSA's compliance officers on the 13th December for comment and I am currently addressing clarifications following this. Action was taken prior to receipt of the latest letter from the FSA to appoint additional staff and a private sector provider was appointed to provide an additional resource to tackle the outstanding new registrations. It is a significant factor that businesses appear to change hands or close when they receive a poor

food hygiene rating and re-open overnight as a new business often with the same management. This means there is a consequent increase in new registrations is having a major and damaging impact on the rest of the food safety programme. We are currently expecting 1,400 of these new registrations per annum when a few years ago it was less than 300. Previously a business that was inspected and found to be non-complaint would receive a further unannounced inspection 6 months after that first inspection.

By changing the business name or putting new owners' names on the documentation these premises need to be re-inspected within 28 days and must be rescored. The overall inspection programme without new registrations used to be around 2,500 and in a very busy year, 3000. This shows that the demand of the further 1,400 inspections per annum, all to be carried out within the 28 days, not within the 6 months to a year for the As and Bs, is what is causing the pressure.

During the inspection in October, the FSA Team did acknowledge that the work quality of the work undertaken by the officers in tackling the problem premises, and the risks to health whether from food poisoning or allergen work, is very good. They do not want this qualitative work aspect to decrease but they do require that the number of inspections increase. The Chief Executive and the Leader have confirmed that the City Council is committed to meeting the statutory responsibilities and will use its best endeavours to do so. The Chief Executive is likely to accept an invite to meet the Chief Executive of the FSA."

Paul Lankester, Interim Assistant Director, Regulation and Enforcement, emphasised that the urgency was as a result of receiving the letter since the General Election and the Acting Chief Executive would be responding soon. It was the intention to circulate to all members the statement made today and have a full report submitted to the January 2020 meeting of the Committee.

The Chair confirmed that he did not wish to have a full debate on the matter at the meeting today as that could be done in January 2020. He suggested that Members contact the Interim Assistant Director, Regulation and Enforcement direct if they have any questions.

Councillor Majid Mahmood commented that when the Food Law Enforcement Plan was agreed by Committee several Members including himself had sought assurance that enough resources would be made available. He was therefore surprised that 5 months later the Authority was in the current situation. The Chair indicated he had raised the issue with the Leader.

Councillor Neil Eustace noted that previously the Chair of the Committee had presented the Food Law Enforcement Plan to City Council and as this had not been done in recent years the issue had not been brought to the attention of members.

The Chair indicated that was an interesting point and went on to note that technical changes to the Food Standards Agency fees were levied had resulted in a high turn over of business requiring inspection putting pressure

on the service. He noted that members would be able to discuss the matter fully in January.

B. Interim Assistant Director, Regulation and Enforcement

- 1252 The Chair indicated that he was pleased advise that Interim Assistant Director, Regulation and Enforcement was staying for a further 6 months and he wished to place on record that the Interim Assistant Director had brought a clear focus to the Department.
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C. Whirlpool Products

- 1253 Councillor Mike Leddy requested that a report be submitted to Committee relating to the issue of faulty Whirlpool washing machines and tumble driers catching and the impact on residents of Birmingham.
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D. Village Green Applications

- 1254 Councillor Majid Mahmood questioned why a Village Green application for Glenmead Detached Playing Fields had not been processed. He requested that a report be submitted to the Committee outlining the process for Village Green applications.

Paul Lankester, Interim Assistant Director, Regulation and Enforcement, there had been a reduction of resources for the processing Village Green applications, but the Assistant Director Neighbourhoods was putting in adequate staffing resources. He requested Members let him know if of any applications outstanding.

AUTHORITY TO CHAIR AND OFFICERS

- 1255 **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 concluded at 1150 hours.

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CHAIRMAN