



## REGULATORY SUB-COMMITTEE

Notice of a Meeting, to be held in the Committee Room 2 (Bad Münstereifel Room) -  
Ashford Borough Council on Wednesday, 20th September, 2023 at 9.45 am.

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The Members of the Regulatory Sub-Committee are:-

Cllrs. Hallett, Leavey, McGeever.

Cllr. Shilton (Reserve)

### Agenda

### Page Nos..

1. **Election of Chair**

2. **Apologies/Substitutes**

To receive Notification of Substitutes in accordance with Procedure  
Rule 1.2(c)

3. **Declarations of Interest**

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To declare any interests which fall under the following categories, as  
explained on the attached document:

- a) Disclosable Pecuniary Interests (DPI)
- b) Other Significant Interests (OSI)
- c) Voluntary Announcements of Other Interests

See Agenda Item 3 for further details.

4. **Minutes**

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To approve the Minutes of the Meeting of this Sub-Committee held on  
24<sup>th</sup> August 2023.

5. **Procedure Note for Regulatory Hearings**

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6. **Exclusion of the Public**

That pursuant to Section 100A(4) of the Local Government Act 1972 as  
amended the public be excluded from the meeting during  
consideration of the following item, as it is likely in view of the nature of  
the business to be transacted or the nature of the proceedings that if  
members of the public were present there would be disclosure of  
exempt information hereinafter specified by reference to paragraphs 1  
& 2 of Part 1 of Schedule 12A of the Act.

7. **Application for a Private Hire and Hackney Carriage Driver's Licence**

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## Declarations of Interest (see also “Advice to Members” below)

- (a) **Disclosable Pecuniary Interests (DPI)** under the Localism Act 2011, relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares a DPI in relation to any item will need to leave the meeting for that item (unless a relevant Dispensation has been granted).

- (b) **Other Significant Interests (OSI)** under the Kent Code of Conduct relating to items on this agenda. The nature as well as the existence of any such interest must be declared, and the agenda item(s) to which it relates must be stated.

A Member who declares an OSI in relation to any item will need to leave the meeting before the debate and vote on that item (unless a relevant Dispensation has been granted).

However, prior to leaving, the Member may address the Committee in the same way that a member of the public may do so.

- (c) **Voluntary Announcements of Other Interests** not required to be disclosed under (a) and (b), i.e. announcements made for transparency alone, such as:

- Membership of amenity societies, Town/Community/Parish Councils, residents' groups or other outside bodies that have expressed views or made representations, but the Member was not involved in compiling or making those views/representations, or
- Where a Member knows a person involved, but does not have a close association with that person, or
- Where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position.

[Note: Where an item would be likely to affect the financial position of a Member, relative, close associate, employer, etc.; OR where an item is an application made by a Member, relative, close associate, employer, etc., there is likely to be an OSI or in some cases a DPI. ALSO, holding a committee position/office within an amenity society or other outside body, or having any involvement in compiling/making views/representations by such a body, may give rise to a perception of bias and require the Member to take no part in any motion or vote.]

### **Advice to Members on Declarations of Interest:**

- (a) Government Guidance on DPI is available in DCLG's Guide for Councillors, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/5962/2193362.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5962/2193362.pdf)
- (b) The Kent Code of Conduct was adopted by the Full Council on 19 July 2012, and a copy can be found in the Constitution alongside the Council's Good Practice Protocol for Councillors dealing with Planning Matters. See <https://www.ashford.gov.uk/media/2098/z-word5-democratic-services-constitution-2019-constitution-of-abc-may-2019-part-5.pdf>
- (c) Where a Member declares a committee position or office within, or membership of, an outside body that has expressed views or made representations, this will be taken as a statement that the Member was not involved in compiling or making them and has retained an open mind on the item(s) in question. If this is not the case, the situation must be explained.

**If any Member has any doubt about any interest which he/she may have in any item on this agenda, he/she should seek advice from the Director of Law and Governance and Monitoring Officer, or from other Solicitors in Legal and Democracy as early as possible, and in advance of the Meeting.**

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## Regulatory Sub-Committee

Minutes of a Meeting of the Regulatory Sub-Committee held in Committee Room No.2, Civic Centre, Tannery Lane, Ashford on the **24<sup>th</sup> August 2023**.

### **Present:**

Cllr. Walder (Chair);

Cllrs. McGeever, L Suddards.

### **Also Present:**

Cllr. Leavey (Reserve)

Environmental Protection & Licensing Team Leader, Licensing Officer, Principal Litigator, Member Services Manager

Applicant, Applicant's Representative.

## **116 Election of Chair**

### **Resolved:**

**That Councillor Walder be elected as Chair for this Meeting of the Regulatory Sub-Committee.**

## **117 Minutes**

### **Resolved:**

**That the Minutes of the Meeting of this Sub-Committee held on 18<sup>th</sup> July 2023 be approved and confirmed as a correct record.**

## **118 Exclusion of the Public**

### **Resolved:**

**That pursuant to Section 100A(4) of the Local Government Act 1972, as amended, the public be excluded from the meeting during consideration of the following item, as it is likely in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present there would be disclosure of exempt information hereinafter specified by reference to paragraphs 1 and 2 of Schedule 12A of the Act.**

## **119 Review of Private Hire Drivers Licence.**

The Councillors and Officers present were introduced. The Chair welcomed all present and explained the procedure to be followed. The Sub-Committee Members confirmed that they had received and read the agenda papers.

The Licensing Officer had submitted a report which outlined the case. She went through the case and the history of the Driver. She drew attention to the relevant parts of Guidance and Ashford Borough Council's Taxi Licensing Policy and outlined the options available to the Sub-Committee.

The Applicant then put his case to the Committee.

The Sub-Committee then asked questions of the Licensing Officer and the Applicant.

The Sub-Committee then retired to make its decision.

On the Sub-Committee's return, the Chair read out the 'Decision and Reasonings Statement' that had been prepared by the Regulatory Sub-Committee. A copy of this was given to the Applicant and would also be sent to all present, along with the Minutes and decision letter.

**Resolved:**

**That the Private Hire Drivers Licenses be suspended with immediate effect, until the following conditions have been adhered to;**

- i. That Applicant re-read the Council's Taxi Licensing Policy and confirm to the Council's Licensing Officer in writing that this had been read and understood.**
- ii. That the licensee provide the result of drug testing via a competent laboratory demonstrating that the licensee is free from the use of controlled substances including tetrahydrocannabinol (cannabis). That testing shall consist of hair follicle testing, taken from the licensee directly by the provider, and shall show a minimum of one month's history. (Which laboratory to be agreed with Ashford Borough Council in advance. Agreement will not be unreasonably withheld by Ashford Borough Council).**
- iii. That pursuant to Ashford Borough Council's Licensing Policy, and the penalty point tariff scheme, for the general breach namely "PH/HC Driver Failing to notify any arrest and release, charge, conviction, caution, or penalty notice within 14 days", 3 penalty points be placed on the licence.**

## PROCEDURE NOTE FOR LICENSING/REGULATORY HEARINGS

1. Prior to the meeting of the Committee<sup>1</sup>, the Committee will have read and familiarised themselves with the Licensing Officer's report and documents referred to in it.
2. The hearing will take place in public, subject to a discretion to exclude the public and/or parties where the public interest in doing so outweighs the public interest in the hearing taking place in public<sup>2</sup>. The Committee may also exclude anyone behaving disruptively.<sup>3</sup>
3. The parties<sup>4</sup> are entitled to be assisted or represented by any person, whether or not legally qualified. A party is entitled to withdraw any of their representations orally at the hearing or at least 24 hours before the day or the first day of the hearing.<sup>5</sup>
4. The Committee may extend any time limit in the Regulations for a specified period where it considers this to be necessary in the public interest, but must state the period of the extension and the reason for it.<sup>6</sup> For example, the Committee may extend the time for making a request to call a witness (see paragraph 16- below).
5. Where a party has notified the authority that he does not intend to attend, the Committee will proceed with the hearing in his absence. Where he has not so notified the authority but does not attend, the Committee may adjourn the hearing to a specified date where it considers it necessary in the public interest to do so. Otherwise, it will proceed with the hearing.<sup>7</sup>
6. Before proceeding in the absence of a party who has not indicated that they do not wish to attend, the Licensing Officer will attempt to ascertain the reason for that party's non-attendance.
7. The Committee may adjourn the hearing to a specified, or extra, date where it considers this to be necessary for the determination of the case.<sup>8</sup> There are limitations on the ability of the Committee to adjourn the case beyond the time limits for determination during the transitional period and on reviews following closure orders by the police.<sup>9</sup>
8. At the outset of the meeting, a Chair will be elected and any personal and/or prejudicial interests declared.<sup>10</sup>
9. Except where the Regulations make specific requirements, the procedure will be in the discretion of the Committee.<sup>11</sup>

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<sup>1</sup> In this Note the expression "the Committee" includes a sub Committee.

<sup>2</sup> Reg 14 Licensing Act 2003 (Hearings) Regulations 2005

<sup>3</sup> Reg 25.

<sup>4</sup> Reg 2(1) "a person to whom notice of the hearing is to be given under Reg 6(1)" – includes objectors and responsible authorities, such as the Police.

<sup>5</sup> Reg 10

<sup>6</sup> Reg 11.

<sup>7</sup> Reg 20.

<sup>8</sup> Reg 12.

<sup>9</sup> Reg 13.

<sup>10</sup> Model Code of Conduct

10. At the beginning of the hearing, the Committee will explain to the parties the procedure it proposes to follow.<sup>12</sup>
11. The Chairman will indicate that all the papers before the Committee have been read and that the Committee is familiar with the issues. He will ask the parties to avoid repetition.
12. The Chairman will indicate the order of presentation.
13. If there are a number of objectors present, the Chairman may request that a spokesperson be appointed. He will make it clear that any party<sup>13</sup> who wishes to speak will be able to do so, and that the appointment of a spokesperson does not mean that the objections of any interested party will be given less weight.
14. The Chairman may also indicate how the Committee intends to deal with conditions proposed by the parties or by the Committee itself. He may ask the parties to attempt to agree a schedule of conditions for use if the Committee is minded to grant the application. This will not mean that the Committee has formed any view of the merits. It will only come to its decision at the end.
15. A party is entitled to be represented or assisted by another person, whether or not that person is legally qualified.<sup>14</sup>
16. If a party wishes a person (other than himself or his representative) to appear at the hearing he must have made a request to do so prior to the hearing within the times prescribed in Reg. 8. The request must name the person and give a brief description of the point(s) on which that person may be able to assist. In such a case, the Committee will determine the application for permission at the outset of the hearing.<sup>15</sup> In determining that request, the authority will consider the representations of all parties upon the matter and may consider the relevance of the proposed evidence, the assistance it will in fact offer to the Committee and the prejudice to the parties, if the evidence is admitted or excluded.<sup>16</sup>
17. Each of the parties has a right to:
  - a. address the Committee;
  - b. give clarification of any point, where such clarification has been sought by the Council in its notice of hearing;
  - c. question any other party, but only where this is expressly permitted by the Committee (see para 21 below).<sup>17</sup>
18. The Committee must allow an equal maximum time for the parties to exercise their rights as set out in para 17 above.<sup>18</sup>

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<sup>11</sup> Reg 21.

<sup>12</sup> Reg 22

<sup>13</sup> see footnote 4

<sup>14</sup> Reg 15.

<sup>15</sup> Reg 22

<sup>16</sup> Reg 22

<sup>17</sup> Reg 16.



19. The Committee will set the time of the hearing at the outset, having regard to its view of the length reasonably required for the hearing. It may hear the parties briefly before setting the maximum time. It may extend the time where circumstances require.<sup>19</sup>
20. The hearing is to take the form of a discussion led by the Committee.<sup>20</sup> The Chairman will ensure that within the discussions, all parties are given an opportunity to state their case as set out in their written application/representations and to meet the case of opposing parties.
21. Cross-examination will not be permitted unless the Committee considers that it is required for it to give proper consideration to the case.<sup>21</sup> Any application to cross-examine will be heard and dealt with at the hearing.
22. The Committee may consider cross-examination to be required, for example, where there is a genuine issue of fact, which can only be resolved fairly through cross-examination.
23. The Committee may question any party or other person(s) appearing.<sup>22</sup>
24. The Committee may take into account documentary or other information provided by a party before the hearing. Information produced at the hearing may only be taken into account with the consent of all other parties.<sup>23</sup> The parties are therefore strongly recommended to exchange documentary evidence and brief summaries of any proposed witness evidence at least 5 days before the hearing, otherwise they may be restricted in the information they can put before the committee. Any material exchanged should also be given to the licensing authority at the same time.
25. The Committee must disregard any information given which is not relevant to the application, representations or notice of the party giving the information. The Committee must also disregard any information which is not relevant to the promotion of the licensing objectives.<sup>24</sup>
26. In certain circumstances, the Committee is required by law to make its determination at the conclusion of the hearing. This includes certain applications made during the transitional period, counter-notices following police objections to temporary events notices, and reviews of premises licences following closure orders. Otherwise the Committee is required to determine the application within five working days of the day or the last day on which the hearing was held<sup>25</sup>.
27. The Committee will give reasons for its decision and will confirm the decision in writing to the parties.

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<sup>18</sup> Reg 24.

<sup>19</sup> Reg 11

<sup>20</sup> Reg 23.

<sup>21</sup> Reg 23.

<sup>22</sup> Reg 17.

<sup>23</sup> Reg 18.

<sup>24</sup> Reg 19.

<sup>25</sup> Reg 26.

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By virtue of paragraph(s) 1, 2 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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