

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 15 May 2013

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00am

Present: Councillors: -

Pauline Bradberry JP
Andy Mercer

Gill Mercer

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andy Mercer be appointed as Chairman for this hearing.

2. APOLOGIES

There were no apologies

3. DECLARATIONS OF INTEREST

No interests were declared.

4. HOUSE TO HOUSE COLLECTIONS - APPEAL AGAINST AN OFFICER DECISION TO REFUSE APPLICATION

The Head of Environmental Services reported on an application to operate house to house collections on behalf of Raunds Youth Action Group (RYAG) which had been made by Mr Stephen Dorks of J & K Ogle Limited to operate house to house collections in Raunds, Stanwick, Hargrave and Chelveston.

The Panel heard that the application had been assessed by officers against East Northamptonshire Council's (ENC) House to House Collections Policy. A letter was subsequently sent to the applicant explaining that ENC were minded to refuse the application as the application failed to meet the requirements of ENC's House to House Collections Policy.

The Panel noted that the documents submitted with the application indicated that all of the proceeds raised from collections of textiles would be donated to RYAG. The anticipated proceeds were stated as being £550 per tonne, although ENC officers had discussed the current prices with the Textile Recycling Association (TRA) which had stated that the current price was approximately £900 per tonne. The donated proceeds would therefore represent less than the 70% required by ENC's policy.

The applicant did not have a written agreement with RYAG regarding the donation of funds as required by the Charities Act 1992 and stipulated in ENC's policy.

The applicant, Mr Stephen Dorks, confirmed that he had previously been supplied a copy of ENC's House to House Collections Policy by the Council's Licensing Enforcement Officer.

The applicant, accompanied by Mr Rob Sheldon, was given the opportunity to address the Panel in support of his application. Mr Dorks informed the Panel that the donation percentage criteria would be met as the collections would be carried out alongside their main business and, therefore, all of the proceeds of the collections could be donated. The figure of £550 had been stated as he knew that this figure could be achieved. The applicant was not aware of where the figure of £900 per tonne given by the TRA could be obtained, but if this was achievable, this sum would be donated to the RYAC.

The applicant clarified that he was at loggerheads with one of the office holders at RYAC and no written agreement existed regarding the collection proceeds. Should he be permitted to collect house to house and the situation with RYAC remained unresolved, he would look to other charitable uses for the proceeds. However, his wish was to support the local carnival through the RYAC.

The Head of Environmental Services confirmed that applications for House to House Collections needed to be for a nominated charitable organisation and could not be for general charitable donations.

Panel Members then asked questions of applicant.

Councillor Gill Mercer asked the applicant whether he could supply documentary evidence of the price that could be obtained for the collected textiles, rather than a "best guess" and the donations that would result from the proceeds. The applicant confirmed that he did not have such documents available at this time.

Councillor Andy Mercer stressed the need for an audit trail for House to House Collections and the distribution of proceeds. Without a legal agreement in place with the proposed recipient, this would not be possible.

The applicant and the Head of Environmental Services were given an opportunity to make any closing statements. No further statements were made.

The Panel then retired to consider their decision.

In their considerations of this application the Panel had regard to the House to House Collections Act 1939 together with the House to House Collection Regulations 1947 (SR&O 1947 No 2662, as amended by Statutory Instrument 1963 No 684), East Northamptonshire Council's House to House Collections Policy revised December 2011 and the Charities Act (1992). The Panel reached the following decision.

RESOLVED:

To refuse the grant of a Licence

The Applicant did attend the hearing; consequently the Panel were provided the opportunity to ask pertinent questions, and considered the verbal evidence provided by the Applicant, and the evidence of the Licensing Officer.

Reasons for Refusal

1. The Charities Act of 1992 Section 59, sub-section (2) states "*it shall be unlawful for a commercial participator to represent that charitable contributions are to be given to or*

applied for the benefit of a charitable institution unless he does so in accordance with an agreement with the institution satisfying the prescribed requirements.” The Panel further noted that the Council’s House to House Collections Policy states in paragraph 3.1 that *“a written agreement between the applicant and a charity as required by the Charities Act 1992”* must be supplied. The Panel noted that no agreement with a charity was in existence.

The failure to have an agreement in place is regarded by the Panel as a failure to comply with ground (f) in Section 2 (3) of the House to House Collections 1939 Act.

2. Members also considered East Northamptonshire Council’s House to House Collections Policy Section 3.2 (legal reasons for refusal F.). This section reads: - *The applicant or holder of the Licence has refused, or neglected to furnish to the Authority such information as they may have reasonably required for the purpose of informing themselves as to any of the matters specified in the foregoing paragraphs.*

This also fails to comply with Section 2 (3) (f) of the House to House Collections Act 1939.

Although the applicant had offered some figures about the costs of the operation, the Panel did not feel that the Applicant had provided documentary evidence to confirm that a sufficient percentage of the gross was going to charity. The Panel considered it was unable to depart from the Council’s own Policy under the circumstances.

Had the documentary evidence required been provided, and the requisite agreement with a charity been available, then the Panel might have been minded to come to a different decision.

The Applicant is advised that if they are aggrieved with this decision they have the right to appeal, to the Secretary of State, within 14 days from the date on which Notice is given.

Chairman