

PROPOSED MOTION TO THE LOCAL GOVERNMENT ASSOCIATION CONCERNING HEAVY GOODS VEHICLE LICENSING APPLICATIONS

1. INTRODUCTION

1.1 On 17th December 2007 Councillor Shotter moved a motion at Full Council regarding the extent of the consultation carried out by the Traffic Commissioners prior to considering Heavy Goods Vehicle Licence Applications and the considerations that could be taken into account by their Inspectors prior to a decision being made.

1.2 The motion read:-

“I propose that New Forest District Council should call on the Local Government Association to make representations to Central Government to review the rules that Government Inspectors use when dealing with applications for Site Operators Licences. In view of the fact that Inspectors only consider the suitability of the site, the Government should:-

(1) Widen the powers of Inspectors so that they may give consideration to the impact on the local road network and on the local environment; and

(2) That the consultative stage be extended to include representations from District, Parish and own Councils (at present only owners of neighbouring properties may comment)”

1.3 In accordance with Standing Order 41 the motion was unanimously referred without discussion to the Cabinet for consideration.

2. THE CURRENT SITUATION

2.1 At present the Council accesses a list specifying all Heavy Goods Vehicle Operators Licence applications received by the Traffic Commissioners. Environmental Health and Planning Enforcement identify and then review the applications regarding sites within the District, and Ward Members are advised by e mail as to the existence of an application together with information on how to comment. This process both alerts local Members as to an application and allows Officers to decide whether any environmental issues arise that they could object on. The list is available on the Traffic Commissioners website and will be supplied (on payment of a subscription) to anyone who requests it. The only other consultation requirement is that a notice has to be placed in a local newspaper as part of making an application.

2.2 However as is made clear in the legislation the relevant environmental issues are strictly limited to topics such as noise, fumes, pollution, vibration and visual intrusion. Generally these concerns are related to the activities on site and it is clear that other topics, notably highway safety and or congestion on the public highway, are

excluded. The Council could also object if it has concerns re the fitness, finance or competence of the operator but it is hard to see how these would be relevant issues. Guidance on objecting to a Licence Application and the relevant considerations provided by the Traffic Commissionaires is attached as Appendix One to this report.

- 2.3 The current legislation means that under the present system the Council cannot effectively raise concerns to support resident issues regarding proposed licences and in particular off site or highway issues. This situation recently arose concerning additional licences being applied for at Eling Wharf at Totton. In the face of vociferous and understandable concerns regarding the adequacy of the roads leading to the site entrance and the problems caused by lorries attempting to manoeuvre the Council sought specialist legal advice as to whether it could object. The advice received was that notwithstanding the severity of the issues it was not seen an objection could be made as the concerns failed to relate to the relevant concerns.
- 2.4 The experience of Council Planning Officers who have objected at Goods Vehicle Licence Application Inquires for both this Council and elsewhere is that such objections do not prevail despite the huge amount of work and effort put in. This being the case it is current normal practice that no objections on planning grounds are made and environmental health concerns are only put forward when it is considered that the operation of the site would cause or have the potential to cause an adverse impact on neighbouring property by virtue of noise, fumes or air quality issues.

3. COMMENTS ON THE PROPOSED MOTION

- 3.1 The proposed motion would significantly widen the relevant considerations in terms of highways and environmental impact and would have an impact on Officer time in terms of objecting to applications and attending inquiries to support the concerns raised.
- 3.2 Concerning the highways issues it has to be remembered that the control of vehicles on the highway in terms of traffic management is already dealt with by the Highway Authority (The County Council) who can carry out works or impose controls to overcome issues as they arise. Notwithstanding this it is felt that the adequacy of the access roads to any site is a proper consideration when Applications are being considered and an extension of the relevant criteria in this respect should be sought.
- 3.3 In terms of the environmental issues Environmental Health can already comment if they feel noise, fumes, vibration etc. would be an issue but the fact is such applications rarely involve such an increase in activities that means this will be a relevant course of action. However a widening of the relevant issues would assist in helping the Council support residents where any Application is going to cause problems, particularly if they will adversely impact on any existing or likely Air Quality Management Areas in the District.

3.4 Regarding the consultations it is felt that an undue emphasis is placed on the Council and particularly adjoining occupiers and owners to monitor web sites or the newspapers to identify relevant applications. It is felt that a specific consultation of those bodies that can comment by the Commissioners should be a requirement as should notification by them by letter of residents who adjoin an application site together with the display by the Commissioners' or the applicants of a site notice. These arrangements would lead to similar level of publication as that carried out for a planning application and this is felt to be a fully proportionate response.

4. CONCLUSIONS

4.1 In conclusion it is clear that the Heavy Goods Vehicle Licensing Process is intended to run in parallel with other controls. Generally this is not an issue given the extent of these controls albeit exceptionally it means that residents who have valid objections feel let down in terms of the lack of support they receive. In view of this it is felt that the first part of the motion should be supported. In addition it is considered that additional consultation requirements should be supported so that local residents and the relevant bodies are aware as to exactly what is proposed.

5. CRIME AND DISORDER IMPLICATIONS

5.1 There are no crime and disorder implications arising directly from this report.

6. ENVIRONMENTAL IMPLICATIONS

6.1 Any extension of the issues relevant to the consideration of Heavy Goods Vehicle Applications would increase the ability of the Council to ensure the high environmental standards in the District are maintained.

7. EQUALITY AND DIVERSITY IMPLICATIONS

7.1 There are no equality and diversity issues arising directly from the report.

8. PORTFOLIO HOLDER COMMENTS

8.1 The Planning and Transportation Portfolio Holder supports the recommendations as detailed below.

9. RECOMMENDATIONS

9.1 It is recommended that members:-

- (a) support the motion with respect to both the additional consultation requirements and the widening of the powers available to Inspectors in determining applications.

- (b) agree that until such times as the powers of Inspectors are widened endorse the current processes in place at New Forest District Council in terms of the consultations carried out by the Council and the generally limited input by Council Officers in terms of contesting applications made.

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Background Papers:

Traffic Commissioners
advice on objecting to HGV
applications

Raising an Objection against an Operator

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The main aim of this page is to help:

1. Organisations with a statutory right to object to an application for a goods vehicle operator's licence; and,
2. Representors or potential representors (generally owners and occupiers of land or buildings near to a goods vehicle operating centre) to:
 - Understand the main purposes of the goods vehicle operator licensing system and its environmental provisions; and
 - Answer many of the questions people have about making a statutory objection or making a representation against the grant of an application for a licence or for a change to an existing licence.

This page also gives advice on how to make complaints about the use of an operating centre and how to report to the Traffic Commissioner any possible breaches of licensing conditions or unauthorised activities by operators. More general information about licensing can be found in Lorry operator licensing on the [Transport Office](#) portal. This does not provide legal advice.

Goods Vehicle Operator Licensing Environmental Provisions

What is goods vehicle operator licensing and who needs a licence?

Goods vehicle operator licensing is a system of licensing aimed at ensuring the safe and proper use of goods vehicles and the protection of the environment around operating centres (i.e. the place where an operator normally keeps his vehicles when they are not being used). Most users of commercial vehicles that weigh over 3.5 tonnes (i.e. the maximum permitted total weight when loaded) require a licence. The holder of a licence is the 'operator'. A licence will authorise an operator to use up to a maximum total number of motor vehicles and trailers, and to use a specific operating centre or centres.

How does an operator obtain a licence?

An operator holds a licence in each Traffic Area where he has an operating centre or centres. Licences often authorise the use of more than one operating centre. Licence applications are made to Traffic Commissioners who are individuals appointed by the Secretary of State for the Environment, Transport and the Regions. They act as independent administrative tribunals under the supervision of the Council of Tribunals. There are eight Traffic Areas and seven Traffic Commissioners each with his own Traffic Area and base in a Traffic Area Office.

The suitability of a proposed operating centre is just one of a number of matters which a Traffic Commissioner must consider before granting an application. Other matters include an applicant's fitness to hold a licence; the financial resources available for, and arrangements in place, to maintain his vehicles; and, where appropriate, professional competence.

Once a licence has been issued an operator can apply to amend (vary) it.

Who can object to the grant of an application?

Objections can be made by statutory objectors such as local authorities, planning authorities, the police, and certain trade associations and trade unions. They may object to the grant of an application on the grounds of fitness, finance and the professional competence of the operator as well as on the environmental and general suitability of an operating centre. Owners and occupiers of land or buildings near an operating centre who feel that the use or enjoyment of their own land would be adversely affected by the proposed operating centre use have a right to make their views known to a Traffic Commissioner. They are called representors: representations can be made only on environmental grounds.

Objectors and representors have different rights. This guide covers both.

How are representors told about applications?

An applicant for a new licence, or for a change to a licence which would affect an operating centre, must advertise the proposed use in a local newspaper circulating in

the locality of the operating centre. The advertisement will give the name of the operator, the address of the operating centre and how many authorised, or additional, lorries and trailers would be kept there if the application were granted. It will also show the address of the Traffic Area Office where representations must be sent.

The advertisement gives potential representors the opportunity to respond within a certain period of time and for other people who have an interest in the use of the site as an operating centre to consider drawing the application to the attention of statutory objectors to encourage them to make an objection. Details of how to lodge a representation can be found on Applying for your Lorry or van operating licence on the [Transport Office](#) portal.

How are objectors told about applications and is the proposed use of an operating centre advertised in any other way?

A Traffic Commissioner must also publish details of most applications. This is done by using a publication called "Applications and Decisions" (As & Ds) which is issued by Traffic Area Offices every two weeks. Statutory objectors must respond within a certain period following the publication of application details if they wish to object but anyone can subscribe to As & Ds as it is a good way of being kept informed. There is a subscription fee. Further information on subscribing to As & Ds can be obtained from your local Traffic Area Office.

What happens next?

A Traffic Commissioner will consider all objections and representations received, as well as any other relevant information known about the proposed site and the applicant before making a decision on the application. If he decides to grant the application, he can impose:

- a. Environmental conditions on the use of an operating centre if he feels they are necessary to prevent or reduce adverse effects, and/or
- b. Road safety conditions if he considers they are necessary to prevent authorised vehicles causing danger to the public at any point where vehicles first join a public road on their way to and from an operating centre, and on any private approach road.

It is a criminal offence to break licence conditions and an operator faces penalties if he does so.

What environmental conditions can be put on a licence?

These cover:

- a. The number, type and size of authorised vehicles, including trailers, kept at the operating centre for maintenance or parking;
- b. The parking arrangements for authorised vehicles, including trailers, at or in the vicinity of the operating centre;
- c. The times when the centre may be used for maintenance or movement of authorised vehicles; and,
- d. How authorised vehicles enter and leave the operating centre.

Are there limits to a Traffic Commissioner's powers?

Conditions on the use of an operating centre can apply only to the licence holder concerned and the use of vehicles authorised under the licence. A Traffic Commissioner cannot place restrictions on any vehicles which are visiting the site or are using it for other purposes.

It is important to recognise that the Commissioner's powers are quite separate from those of highway, planning and local authorities. A Commissioner cannot control the use of the premises for other purposes. This is the responsibility of the local planning authority. A Traffic Commissioner cannot take into account the non-environmental suitability, including safety, of the public highway leading to the operating centre or the road network. These are matters for highway authorities.

In certain circumstances a Traffic Commissioner may not refuse an application on environmental grounds (other than for parking).

Objections

Who can make an objection?

The following organisations have a statutory right to object to an application for a goods vehicle operator's licence or an application to vary a licence once issued:

- A Chief Officer of Police
- A Local Authority (but not a Parish Council)
- A Planning Authority
- The British Association of Removers
- The Freight Transport Association
- The General and Municipal Workers Union
- The National Union of Rail, Maritime and Transport Workers
- The Road Haulage Association
- The Transport and General Workers Union

- The Union of Shop, Distributive and Allied Workers
- The United Road Transport Union.

How are statutory objectors notified of any application?

Each **Traffic Area Office** regularly produces a publication known as [Applications and Decisions](#) which contains details of all the applications for a licence made to that office during a given period. The publication is sent on request and usually by subscription to statutory objectors in the region covered by the Traffic Area Office. The list of recipients is kept as up to date as possible but if you feel that you should be receiving a copy and are not please contact your local [Traffic Area Offices](#).

On what grounds can objections be made?

Objections can be made on environmental or non-environmental grounds or both.

Environmental grounds Environmental objections may be made under the provisions of Section 12 (1) (applications for) and Section 19 (2)(a) & (4)(a)(variations to) of the Goods Vehicles (Licensing of Operators) Act 1995.

The environmental factors that result from the use of land as an operating centre and which can be considered relevant to an objection may include: Noise; Fumes; Pollution; Vibration; and, Visual intrusion.

Non-environmental grounds Non-environmental objections may be made on one or more of the following grounds on the basis that the requirements of Section 13 of the Goods Vehicles (Licensing of Operators) Act 1995 cannot be met. They can relate to:

- a) The suitability of the applicant to hold an operator's licence on the grounds that he cannot meet the requirements to be: of good repute (for standard licences only); fit to hold a licence (for restricted licences only); of appropriate financial standing (for standard licences only); and, professionally competent (for standard licences only).
- b) The suitability of the operating centre in relation to: size for the number of vehicles and trailers proposed to be parked there; the safety of the entrance and exit arrangements from the site onto the public highway; and, parking facilities in or around the site.

Making an objection

An objection to an application for or variation to an operator's licence must:

- Be made in writing to the Traffic Commissioner at the local Traffic Area Office and should wherever possible quote the legislation under which the objection is being made

- Be signed by an authorised signatory from the organisation making the objection
- Be received at the Traffic Area Office no later than 21 days after the date that notice of the application is published in ‘Applications and Decisions’;
- Be copied to the applicant on the same day, or next working day, as the objection is made to the Traffic Commissioner
- State specific grounds and give sufficient particulars so that the applicant knows the case he has to answer to.

If any of the above criteria are not met the Traffic Commissioner will not accept the objection as duly made unless there are exceptional circumstances.

What happens next?

In the case of a valid objection the Traffic Area Office will usually write to the operator asking for further information about the proposed use of the operating centre and seeking comments on the matters contained in the objection. The applicant and the objector will also be encouraged to try to resolve any possible differences between them through direct liaison.

The Traffic Commissioner will then decide if he has sufficient evidence to make a decision on the application or whether to hold a Public Inquiry to hear evidence from both parties before reaching a decision on the application (see Part 6). If he considers that he has sufficient information to determine the application without a Public Inquiry the Traffic Commissioner will advise all parties of his intended decision and they will be invited to make further representation in writing or request that the matter is considered at Public Inquiry.

What range of decisions is available to the Traffic Commissioner?

There are numerous options available to the Traffic Commissioner. The more usual are:

- Grant the application as applied for
- Grant the application but attach conditions regarding the use of the operating centre
- Grant the application for a reduced number of vehicles and/or trailers
- Refuse the application.

Is the Traffic Commissioner’s decision final?

Any decision not to grant an application in full, to attach conditions to the use of an operating centre or not to meet the wishes of a statutory objector can be challenged by Appeals to the Transport Tribunal. More information on this can be found on the [Transport Office](#)