

MINUTES of a meeting of the HACKNEY CARRIAGE AND PRIVATE HIRE GROUP held in the Council Chamber, Council Offices, Coalville on THURSDAY, 1 APRIL 2004

Present: Councillor R A Evans (Chairman) (In the Chair)

Councillors J G Coxon, P A Hyde and J B Webster.

Officers: Mr T Beirne, Mrs J Cotton, Miss M Lister and Mr J E Peters.

Apologies: Councillor D Howe.

There were no declarations or personal or prejudicial interests.

780. MINUTES

... Consideration was given to the minutes of the meetings held on 20 November, 4 December, 10 December 2003 and 24 February 2004 (copies previously circulated and retained with the official copy of the minutes).

RESOLVED:

- (a) That the Hackney Carriage and Private Hire Group meetings held on 20 November, 4 December and 10 December 2003 be approved as a correct record.
- (b) That the minutes of the meeting held on 24 February 2004 be referred to the next group meeting for approval.

781. EXCLUSION OF PRESS AND PUBLIC

RESOLVED:

That in pursuance of Section 100A (4) of the Local Government Act 1972 the press and public be excluded from the meeting for the following business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 4 of Schedule 12A to the Act.

Mrs Cotton reminded members that they were acting in a quasi judicial capacity. The effect of this meant that the rules of natural justice had to be observed and that any applicant must be treated fairly and be seen to be treated fairly. She requested members to restrict themselves to questions and to reserve their opinions until the process of deliberation. She also reminded members that the group would be required to give reasons for any decisions to refuse an application or to revoke or to suspend a licence.

782. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

Application reference HCD814

The applicant attended the meeting and was accompanied by 2 friends whom the applicant had asked to assist with his representation.

Mrs Cotton outlined the procedure for hearing the application.

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The Senior Licensing Officer introduced the licence application and the background to the case to the group and the following papers were circulated:

- (1) A copy of the application form for a hackney carriage driver's licence.
- (2) A copy of the applicant's Criminal Records Bureau (CRB) enhanced disclosure document.
- (3) A copy of the declaration and consent section on the applicant's completed CRB disclosure application form.
- (4) A copy of the applicant's DVLA counterpart driving licence.
- (5) Guidelines to the Council's policy relating to the relevance of convictions to applications for hackney carriage or private hire vehicle drivers' licences.

The Senior Licensing Officer gave more details and explained the background to the application and that members were being asked to consider whether the applicant was fit and proper to be granted a hackney carriage driver's licence. She referred to the applicant's 3 conviction details and the court disposals for the 4 offences. In respect of the convictions she reminded members that under the Rehabilitation of Offenders Act 1974 a person did not usually need to provide details about convictions that were "spent". However on 28 February 2002 the Rehabilitation of Offenders 1974 (Exemption) (Amendment) Order 2002 came into force. This Order made taxi drivers an excepted occupation and meant that any previous convictions they had were not to be treated as rehabilitated under the provisions of the 1974 Act. The Senior Licensing Officer informed members that the applicant had failed to declare any of his 3 convictions on either his application form or on his CRB disclosure application. In addition he had failed to declare that he had previously held a licence granted by the District Council and that he had an application for renewal of a licence refused in 2003.

Members were asked to note that Section 59(1) of the Local Government (Miscellaneous Provisions) Act 1976 stated that a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant was a fit and proper person to hold a driver's licence.

District Council officers had carried out the usual assessment checks on the application and members were being asked to consider whether the applicant was fit and proper to be granted a licence. In addition to the convictions and the applicant's failure to disclose his convictions, the Senior Licensing Officer confirmed that the applicant's current DVLA driving licence showed 2 endorsement for a failure to give information as to the identity of a driver in September and December 2002.

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In summarising the Senior Licensing Officer asked members to note that the onus was on the applicant to show that he was a fit and proper person to be granted a licence. The Council's overriding consideration must be the protection of the public and all other matters were secondary to public safety. She referred members to the Council's current guidelines relating to convictions and in particular the sections for offences of a sexual nature (general policy), indecency offences (Section D) and violence (Section E). Members were asked to give due consideration to the nature of the applicant's convictions. Officers felt that the 2002 Exceptions Order recognised the importance of public safety responsibility of hackney carriage and private hire drivers who were likely to be regularly in sole charge of vulnerable adults and children. Members were asked to consider whether the applicant had satisfied them he was a suitable person to be licensed.

Members noted that there was a right of appeal to a magistrates' court against a refusal to grant a driver's licence.

There were no questions to the Senior Licensing Officer from the applicant.

In reply to a question from a member of the group the Senior Licensing Officer confirmed that the District Council had previously licensed the applicant as a hackney carriage driver between July 1997 and June 2003. However on 27 June 2003 the Council had refused to renew his licence to drive a hackney carriage vehicle as it was not satisfied he was a fit and proper person. The applicant had not appealed against the decision but submitted this new application in February 2004.

The applicant and his representatives then gave details of the applicant's case, including details in respect of his 3 convictions. In his submission the applicant stated that he had been licensed by the District Council for 6 years and had been a reliable and good driver. In that time the Council had not prosecuted him for any offences in accordance with the taxi legislation and there had been no complaints against him of a sexual nature by passengers. He wanted to return to driving taxis in the district.

The applicant gave further details in respect of the specific conviction for soliciting a woman for prostitution from a motor vehicle, causing her annoyance.

The Senior Licensing Officer asked the applicant questions on his reasons for failing to disclose convictions, his failure to surrender to custody, his failure to produce documentation to the police for motoring offences and his recall of interviews with officers in 1997 concerning complaints from women passengers regarding sexual comments and remarks made by the applicant. In response to these questions, the applicant replied that the disclosure form and application forms were completed by a friend on his behalf and the failure to declare "spent convictions" was "not his fault"; he had failed to surrender to custody because he had returned to Pakistan to visit his ill mother but had surrendered to custody on his return to the UK. His failure to produce his driving licence to the police was due to another return to Pakistan and lodgers in his house losing the correspondence. He did recall being interviewed by officers after a number of allegations which had been made against him by persons associated with a taxi company whose employment he had left. He denied these complaints which were fabricated by his previous employer. The Senior Licensing Officer was unsure that she and the applicant were referring to the same allegations. She reminded him that the Council had received 3 separate complaints by women

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passengers of sexual approaches, but this evening he claimed he had a good record and there had been no complaints of a sexual nature made against him. He refuted the allegations of making inappropriate sexual comments and remarks and he had suggested that they could have resulted from a misunderstanding of his friendliness as the passengers were drunk.

In response to questions from members of the group the applicant gave further details in respect of the specific conviction for soliciting a woman for prostitution, the findings of the magistrates' court, the legal advice that he had been given in respect of the case. He stated he was in the company of friends and was not driving the vehicle, and had pleaded not guilty. He could not explain why the court records indicated a guilty plea. He answered further questions about his current employment, the reasons for his application to work in North West Leicestershire and his failure to correctly complete his application forms.

In his closing address to the group the applicant stated that he was currently unemployed and he was supporting a wife and 4 children. He had chosen not to claim state benefits to support his family. He asked members to consider his application favourably. He had not brought any written references in support of his case.

At 7.35pm the applicant, his representatives, Mr Beirne, Miss Lister and Mr Peters left the room whilst the group deliberated. The parties were invited to return to the room at 8.00pm.

RESOLVED:

That the application for a licence to drive a hackney carriage be refused on the grounds that members were not satisfied that the applicant was a fit and proper person to hold a driver's licence under Section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976.

In reaching their decision the group had listened to the applicant's case, had considered all the evidence presented and had regard to

(i) The Council's policy on the relevance of criminal convictions and in particular paragraphs 2, 3(d) and 3(e). Having listened to the applicant's explanations, the Group saw no reason to depart from the guidelines and grant the application.

(ii) The objectives of a licensing regime "which were plainly intended to ensure that those licensed to drive vehicles were safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest and were not persons who would take advantage of their employment to abuse or assault passengers" as stated by Lord Bingham LCJ in the case of *McCool v Rushcliffe BC* 1998. The Group had therefore considered and had regard to his past record as a driver, his temperament and other relevant considerations. Bearing in mind

- (a) His past record as a driver, including previous complaints from female passengers about his conduct to them;

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- (b) His previous convictions for failure to provide information to the police, two convictions for using threatening, abusive, insulting words or behaviour with intent to cause fear or provocation or violence, the conviction in December 2003 for soliciting a woman for prostitution from a motor vehicle causing her annoyance and failing to surrender to custody as soon as practicable after appointed time.
- (c) His failure to disclose previous convictions on his application form and that he had previously held a hackney carriage driver's licence with the District Council but had his application to renew his licence refused in June 2003; and
- (d) The explanations and evidence given by him at the meeting.

The applicant had not satisfied the Group of his honesty and that he was a fit and proper person to be granted a hackney carriage driver's licence and the application was refused.

Mrs Cotton confirmed the applicant had the right of appeal against the decision to the Magistrates' Court, and details of this would be given in a letter confirming the Group's decision.

783. HACKNEY CARRIAGE DRIVER'S LICENCE

Licence reference HCD745

The licensee attended the meeting with his partner.

Mrs Cotton outlined the procedure for the hearing to the licensee.

The Senior Licensing Officer explained the background to the matter and that the group were being asked to determine whether the licensee's hackney carriage driver's licence should be suspended or revoked. She circulated the following papers to the Group:

- (1) A copy of the licensee's hackney carriage driver's licence,
- (2) A copy of a fax showing court register details,
- (3) Section 61 of the Local Government (Miscellaneous Provisions) Act 1976,
- (4) A copy of the licensee's Criminal Records Bureau enhanced disclosure document and
- (5) Copies of 2 letters sent to the licensee from the Manager of Central Support in October 2000 and December 2003.

The Senior Licensing Officer referred to the papers circulated to the group and explained that the licensee had visited the Council Offices on 12 March 2004 and disclosed a conviction to officers. Officers had subsequently obtained confirmation that the licensee had been convicted of using threatening, abusive or insulting words or behaviour within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby. The offence was contrary to Section 5(1) and (6) of the Public Order Act 1986.

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Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 gave the local authority powers to suspend, revoke or (on application for renewal) refuse to renew a hackney carriage driver's licence. The Senior Licensing Officer explained the wide ranging grounds contained in this section of the legislation and how the licensee's conviction would arguably fall in Section 61(1)(a) which included offences of dishonesty, indecency or violence. However it was also open to members to suspend or revoke a licence under Section 61(1)(b) for any "other reasonable cause" and this could include if the licensee failed to remain a "fit and proper person" to hold a licence and in considering the appropriate course of action she drew members' attention to the licensee's other convictions.

Members were reminded of the licensee's attendance at a group meeting in 2003 and a warning given by the group regarding his behaviour. Members were asked to consider whether they wished to take any action against the licensee.

The Chairman invited questions to the Senior Licensing Officer from the licensee and members of the group. The licensee asked that the offence be considered on its own and that his other convictions not be taken into consideration. Members sought clarification from the Senior Licensing Officer of the requirements to disclose convictions and to notify officers of potential charges.

The licensee gave details of his case. He circulated papers to officers and members setting down the key points concerning the recent conviction that he wished the group to take into consideration. Members were given 5 minutes to read the circulated paper.

The licensee addressed the group in support of the circulated paper. He described the incident and stated that he accepted responsibility for his action and he regretted making the comments that he had. He had chosen to be honest about the incident and asked members to bear in mind his honesty, the court's punishment, the effect of a newspaper report of the court case on his family and partner and his anxiety at the possible loss of his licence and livelihood. The licensee stated that he was striving to be a better taxi driver and he pointed out that the offence was committed before his appearance at a previous group meeting. It was acknowledged that he had not drawn the incident to the attention of the Group at the hearing on 20 November 2003 when they considered whether to revoke or suspend his licence, but the licensee stated he had not been aware on that date that he would be charged over the incident. He did not consider that he was a danger to the general public.

The licensee brought to the Group for its consideration copies of his police interview and the witness statements of the shop assistant and supervisor. With the applicant's consent Mrs Cotton read out the interview record and witness statements.

The Chairman invited questions to the applicant from the Senior Licensing Officer and members of the group. The Senior Licensing Officer had no questions. In response to questions from members of the group the licensee explained his reasons for pleading guilty to the charge, his enjoyment of the job and gave examples of "offences" that had happened to him as a taxi driver.

At 9.05pm the licensee, his partner, Mr Beirne, Miss Lister and Mr Peters left the room whilst the group deliberated.

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During the group's deliberation the licensee remembered 3 references which he wished to present to members to support his submission that no action be taken by the District Council. The Senior Licensing Officer delivered the 3 documents to the group.

At 9.55pm the parties were invited to return to the room.

RESOLVED:

That no action be taken to suspend or revoke the licensee's hackney carriage driver's licence.

In reaching their decision the Chairman of the Hackney Carriage and Private Hire Group stressed how difficult the decision had been and referred to the time that the group had deliberated on their decision. The group had previously administered warnings to the licensee in 2000 and 2003. In November 2003 the Group had considered the licensee should be made an exception to the guidelines on the facts of the particular incident and had considered the licensee was, on balance, still a fit and proper person and should retain his licence. Members had taken his most recent conviction very seriously. It had cast a shadow on his suitability to continue to hold a hackney carriage driver's licence. The most recent conviction, together with his previous convictions, suggested a pattern of violent and aggressive behaviour. In taking its decision the group had properly not only considered the latest conviction in isolation but had regard to all of his previous convictions, the warnings previously given, and his general character. However the Group felt that the licensee had been honest, had presented 3 glowing references and had expressed regret for the latest offence. Having considered all the evidence presented, the licensee had only just managed to persuade the Group he remained a "fit and proper person", no action should be taken under S61(1)(b) to revoke or suspend his licence and he should continue to hold a hackney carriage driver's licence.

The Chairman emphasised the difficulty that members had been faced with in making the correct decision and advised the licensee that his conduct as a driver in common with all licensed drivers remained under close scrutiny. Any future complaints or any matters relevant to his suitability and character would be considered seriously and not in isolation but together with all previous complaints and convictions. The Chairman asked the licensee to demonstrate by his behaviour that the District Council had made the correct decision and explained a letter setting out the group's reasons for their decision and warning him of his future conduct would be sent.

The meeting terminated at 10.02pm.

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