

MINUTES of a meeting of the HACKNEY CARRIAGE AND PRIVATE HIRE GROUP held in the Council Chamber, Council Offices, Coalville on WEDNESDAY, 10TH DECEMBER 2003.

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

Councillors J G Coxon and P A Hyde.

Officers Mr M A Beirne, Mr J R Kirkham, Miss M Lister and Mrs C E Walters

Apologies for absence were received from Councillors D Howe and J B Webster.

There were no declarations of personal and prejudicial interest.

Mr Kirkham 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 entitled to a fair hearing without bias or prejudice. He requested members to restrict themselves to questions and reserve their comments and observations until the process of deliberation.

Members were requested to consider whether the applicants were fit and proper persons to hold a driver's licence. There was no actual definition of "fit and proper". However, there had been a recent High Court case which had decided the impact of a refusal to grant, suspension or revocation of a licence on the livelihood of the driver and his personal circumstances except perhaps in very rare cases to explain or excuse some conduct of the driver was not requested to be considered when the local authority was considering a driver's licence. The Council's overriding concern was the duty to protect the public.

510. 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.

511. APPLICATION FOR PRIVATE HIRE DRIVER'S LICENCE**

Members were circulated with background papers for an application for a private hire driver's licence. Members were asked to determine the application and decide whether or not to grant the licence.

The Senior Licensing Officer explained the reasons for referring the licence application to the Group. She referred members to the circulated papers which included a copy of the applicant's application form, a copy of the hand written declaration by the applicant giving details of unspent criminal convictions, a copy of the CRB enhanced disclosure document, a copy of the guidelines to Council policy relating to the relevance of convictions and a copy of section 51 of the Local Government (Miscellaneous Provisions) Act 1976 which gave the Council power not to grant a private hire driver's licence.

Chairman's initials

The Senior Licensing Officer explained that members were being asked to consider whether the applicant was fit and proper to be granted a private hire driver's licence. This was based on the fact that the applicant had 3 live convictions recorded against him, 2 of a dishonest nature and one of a violent nature. In accordance with the Council's policy to the relevance of convictions, the applicant had not remained free from conviction for the periods stipulated in the guidelines, namely 3 and 5 years. She stated that members were requested to determine the application having regard to the convictions recorded against the applicant and that if members were minded to depart from the guidelines, clear reasons should be given for so doing. She asked members to note that it was for the applicant to show that he was a fit and proper person. The Council's overriding consideration was the protection of the public and all other matters were secondary to public safety.

She stated that there was a right of appeal to the Magistrates' Court against a refusal to grant a driver's licence.

There were no questions to the Senior Licensing Officer.

The applicant then gave details of his case including details of the 3 unspent convictions. The first conviction relating to obtaining property by deception arose the same day he had left his previous job with a building company. That evening he had filled up his car with fuel and it was paid for using the company account. The owner of the company then took action against the applicant.

The second live conviction of making off without paying related to an incident when his mother had been taken seriously ill and he had stopped for petrol and unfortunately driven off without paying. The third live conviction relating to common assault related to an incident where 3 youths had hit the back of the applicant's vehicle whilst it was at his house. The applicant chased the youths and caught one and threw him to the floor whilst his partner called the police. Proceedings for common assault were then taken against the applicant.

The Senior Licensing Officer had no questions with the applicant so the Chairman invited questions from members of the Group.

In answer to questions the applicant confirmed that he did currently hold a private hire driver's licence with Charnwood Borough Council. This was his second year of holding such a licence and it was confirmed that that licence would expire on 15 September 2004. The applicant stated that he currently works for a private hire operator based in Loughborough and if he was granted a licence he would transfer to a newly opened private hire operator's base within this District. He also gave further details of his first live conviction and answered members when questioned about how he would react if any problems arose whilst he was a licensed driver within this district.

At 6.50pm the applicant, the Senior Licensing Officer and the Council's Byelaw Enforcement Officer left the meeting whilst the group deliberated. The parties were invited to return to the room at 7.05pm.

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RESOLVED:

That the application for a private hire vehicle driver's licence 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 51 of the Local Government (Miscellaneous Provisions) Act 1976. In reaching their decision the Group had considered the applicant's case and had considered all the evidence presented but, refused the application having had regard to:

- (a) the 3 unspent convictions which related to violence and dishonesty and were clearly set out in the guidelines to Council policy relating to the relevance of convictions to applicants for hackney carriage or private hire vehicle drivers' licences.
- (b) it was felt that these convictions clearly fell outside the Council's guidelines and members felt it was their overriding duty to protect members of the public.

Mr Kirkham reminded the applicant of his right of appeal to the Magistrates' Court which could be exercised within 21 days of written receipt of confirmation of the Group's decision.

512. REVOCATION OF HACKNEY CARRIAGE DRIVER'S LICENCE**

Members were circulated with background papers to this case. It was noted that members were asked to consider the revocation of a current hackney carriage driver's licence.

The Senior Licensing Officer explained the reasons for referring this case to the group for determination. She referred members to the background papers which included a copy of the current hackney carriage driver's licence valid from 1 January 2003 to 31 December 2003, a copy of an interview with the applicant and Mrs Walters held on 10 November 2003, a copy of a court extract from Derbyshire Magistrates confirming the applicant's 2 convictions, a copy of the guidelines to Council policy relating to the relevance of convictions and a copy of section 61 of the Local Government (Miscellaneous Provisions) Act 1976 which gave the Council power to suspend or revoke a current driver's licence.

In particular the Senior Licensing Officer drew members' attention to page 3 of the background papers which was confirmation from Derby Magistrates' Court that the applicant had recently been convicted of 2 counts of making off without paying. The conviction was dated 24 November 2003 and the licensee had been given a 12 month conditional discharge and ordered to pay costs of £138 to the CPS. Under the Rehabilitation of Offenders Act 1974 these convictions would become spent on 24 November 2004.

In answer to a question from a member, the Senior Licensing Officer stated that she felt that the reason that initial contact regarding this case had come from the police was that the licensee had been using his licensed vehicle whilst the 2 incidents had occurred and the arresting officer had in fact taken the licence plate from the vehicle. Therefore the police officer concerned knew the vehicle was licensed with this authority and they were checking details of the licence with officers.

Chairman's initials

The applicant then gave details of his case which included details of the two incidents of making off without paying and circumstances surrounding those. The licensee stated that the incidents were related to his gambling addiction when on an evening he was tempted to use casinos around the East Midlands area where he would lose all his money and in order for him to continue working on those evenings he had made off without paying for petrol.

The Senior Licensing Officer had no questions for the applicant so the Chairman invited questions from members of the Group.

In response to questions the licensee stated that he was now receiving counselling for his gambling addiction and he now realised that he had wasted a considerable amount of his life and had lost his house, wife and children as a result of his addiction. He confirmed that he was currently driving a PSV on a part time basis. When questioned as to why he had sold his licensed hackney carriage vehicle following his arrest, the licensee stated that he had assumed he would not be able to continue hackney carriage work as the arresting police officer had taken his plate. However when speaking to the officers at the Council they confirmed that this was not the case and he could have carried on working. When asked about previous incidents the licensee stated that he had attended a meeting of the Service Appeals Group approximately 3 to 4 years ago. However he does now have a clean DVLA driving licence and these 2 convictions had now marred his previous clean record.

At the 7.30pm the applicant, the Senior Licensing Officer and the Council's Byelaw Enforcement Officer left the meeting whilst the group deliberated. The parties were invited to return to the room at 7.45pm.

RESOLVED:

That the hackney carriage driver's licence be revoked on the grounds that members were not satisfied that the licensee was a fit and proper person to continue to hold a driver's licence under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976.

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

- (a) the 2 convictions on 24 November 2003 for making off without paying which were clearly contrary to the guidelines to Council's policy relating to the relevance of convictions.
- (b) that the licensee had breached the trust that the Council expected of a licensed driver.

Mr Kirkham reminded the licensee that there was a right of appeal to the Magistrates' Court within 21 days of written receipt of the formal decision of this Group.

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513. REVOCATION OF HACKNEY CARRIAGE DRIVER'S LICENCE**

Members were circulated with copies of background papers relating to this case. Members were asked to consider revocation of the current hackney carriage driver's licence.

The Senior Licensing Officer explained the reasons for referring this case to the group for determination and referred members to the background papers. The background papers included a copy of the current hackney carriage drivers licence valid from 1 February 2003 to 31 January 2004, a copy of an incident report from the enforcement officer at East Staffordshire Borough Council, a copy of a witness statement of PC Faarup of Staffordshire Police, a copy of an extract from the Burton Mail dated 19 November 2003, a copy of an interview with Mr Khan and John Peters held on 27 November 2003, a copy of the guidelines to Council policy relating to the relevance of convictions and a copy of Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 giving the Council powers to suspend or revoke a driver's licence.

The Senior Licensing Officer stated that this case was different to the previous in that the licensee had not in fact been convicted of any offence at the present time. However he had been charged with dangerous driving and using threatening, abusive or insulting words or behaviour during an incident on 12 November 2003. Following notification of the charges from the Enforcement Officer at East Staffordshire Borough Council and obtaining details of the incident, officers had decided to put this case to the Group on the grounds of Section 61 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1976. This stated that a district council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on the grounds of any other reasonable cause. It was felt that as these charges directly related to the behaviour expected of a licensed hackney carriage driver members should be asked to consider the revocation of the current hackney carriage driver's licence.

In answer to a question from members, the Senior Licensing Officer stated that she had considered suspension of the hackney carriage driver's licence in this case. However she felt that the licensee's fitness to hold a hackney carriage driver's licence was in doubt in this case and a suspension of his licence could not show that he would be able to redeem his character during the period of the suspension. She also stated that if the licensee was found not guilty at the forthcoming court hearing then officers would look at the court's decision to ascertain the reason why he was found not guilty. This could be on a technicality during the court process.

The applicant then gave details of his case. He stated that he totally denied the charges against him. He had a history with the enforcement officer at East Staffordshire Borough Council and the particular police officer who had been involved in the incident concerned. The licensee then circulated a copy of a letter he had received from the licensing and enforcement manager at East Staffordshire Borough Council following a complaint he had submitted regarding the enforcement officer concerned. The licensee also stated that he had put in a formal complaint to Staffordshire Police regarding the police officer following incidents which had occurred in previous years. He also stated that he had made a further complaint to Staffordshire Police and that he was waiting to be

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interviewed by an inspector. The licensee felt that he was not guilty until proven otherwise by a court and this was a matter for the court to decide.

The Senior Licensing Officer then asked the licensee to confirm the date of his court case. The licensee confirmed that he would be attending Burton Magistrates' Court on Tuesday, 13 January 2003 for a committal hearing.

The Chairman then invited members of the Group to question the licensee. In answer to members' questions the licensee confirmed that he had had previous dealings with the enforcement officer at East Staffordshire Borough Council but at the time of this incident he did recognise her and did not know who she was. The licensee confirmed that at the time of the incident his son was in an appropriate child restraint. He denied using threatening behaviour but did confirm that there was an argument during the incident which related to the identity of the enforcement officer concerned.

In his closing address to the Group, the licensee stated that the enforcement officer should not have informed this Council of the charges at this stage. This was a matter to be dealt with by the court and any decision should await the court's decision.

At 8.45pm the applicant, the Senior Licensing Officer and the Council's Byelaw Enforcement Officer left the meeting while the group deliberated. The parties were invited to return to the room at 9.00pm.

RESOLVED:

- (a) That the hackney carriage driver's licence not be revoked under section 61 of the Local Government Act (Miscellaneous Provisions) Act 1976.
- (b) That the group await the decision of Burton Magistrates Court on 13 January 2004 following which the licensee be asked to attend a further meeting of this Group to determine the future of his hackney carriage driver's licence.

The meeting terminated at 9.10pm.

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