

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 29 AUGUST 2017**

Present: Councillor R Chambers (Chairman)
Councillors J Davey, T Goddard and E Hicks

Officers in attendance: M Chamberlain (Enforcement Officer),
B Ferguson (Democratic Services Officer),
J Jones (Licensing Officer), E Smith (Solicitor)

Also Present: The applicants in relation to Items 7 and 8.

LIC9

**DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE (AGENDA ITEM 2)**

Officers reported the reason for the failure of Mr Bakewell to attend the meeting was due to him having been sentenced to prison for five years at Chelmsford Crown Court on 26 June 2017 after admitting tax fraud.

The Committee considered the Enforcement Officer's report in Mr Bakewell's absence, seeking a determination as to whether the driver was a fit and proper person to retain a licence.

Members withdrew to deliberate on a decision.

DECISION

The application before the Panel today is for the revocation of Mr Bakewell's joint private hire/hackney carriage licence dated 1st January 2016, in accordance with S61 (1) (a)(i) and (b) Local Government (Miscellaneous Provisions) Act 1976.- the (a)(i) he has been convicted on an offence involving dishonesty, indecency or violence and (b) any other reasonable cause. The three year licence is due to expire on 31st December 2018 and Mr Bakewell's last driving role was with 24 x 7Ltd of Stansted working on school contracts.

On 5th July 2017 the Licensing Department received notification from Mr Mahoney of 24 x 7 Ltd that on 26th June 2017 Mr Bakewell had been sentenced to five years imprisonment for tax fraud. A link to the Essex Live website revealed that Mr Bakewell had apparently set himself up as a tax advisor and instructed a number of clients how to fraudulently claim £1.5 million in tax repayments. HMRC led the investigation and discovered that Mr Bakewell had managed to retain around £300,000 from his clients' fraudulent claims. He had not registered with HMRC as a legal tax agent nor did he either complete due diligence checks on his clients or keep records as required by the Money Laundering Regulations. Mr Bakewell was jailed for five years at Chelmsford Crown Court following a guilty plea.

Paragraph 5 of Appendix A of the Council's Licensing Standards for Drivers states that a driver must have:-

"No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended sentence) was imposed"

Furthermore, paragraph 18(d) of Appendix G of the Licensing Standards requires drivers to notify UDC in writing of:-

"Any investigations being carried out into the activities of the driver by the police or a regulatory authority of which the driver is aware within 7 days of the driver becoming aware of the investigation".

We have had to consider most carefully whether this Committee can place any trust and confidence in Mr Bakewell as a licensed driver within the District of Uttlesford. Unfortunately, the answer has to be no.

Accordingly, we have no alternative but to revoke Mr Bakewell's licences under S61(a)(i) and (b) of the 1976 Act as he is no longer a fit and proper person to hold them.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the licenses remain in force. Were Mr Bakewell not serving a custodial sentence we would have to consider whether it was in the interests of public safety that the revocation was to be of immediate effect.

LIC10 **EXCLUSION OF THE PUBLIC**

RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

LIC11 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 4)**

Members were informed the driver had contacted the Enforcement Officer to make him aware he would be unable to attend the hearing as he had been away and had not known the hearing was taking place.

The Committee considered the report of the Enforcement Officer in the driver's absence, seeking a determination as to whether the driver was a fit and proper person to retain a licence.

Members withdrew to deliberate on a decision.

DECISION

The driver holds a current joint private hire/ hackney carriage driver's licence. He had been called before members for them to consider whether he remained a fit and proper person to retain a licence following the 10 penalty points endorsed on his driving licence for offences committed within the last three years. He had also breached his conditions of licence by failing to notify the Council of the fixed penalty notice within seven days, for which he had yet to be sanctioned.

However, without the driver being present to explain, members felt unable to make a decision and asked for the matter to be deferred to allow the applicant a final chance to attend.

LIC12

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 5)

Members were informed the driver had given no notice that he would attend and had not arrived for the hearing.

The Committee considered the Enforcement Officer's report in the driver's absence, seeking a determination as to whether the driver was a fit and proper person to retain a licence.

Members withdrew to deliberate on a decision.

DECISION

The application before the Panel today is for the suspension or revocation of the applicant's joint private hire/hackney carriage licence dated 29th December 2016, in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- "any other reasonable cause". The three year licence is due to expire on 30th November 2019 and has never been collected from the Council's offices.

In his application the driver stated that he would be working for Stansted Travel Services, but they have no knowledge of him.

Uttlesford licensed drivers are required to have an enhanced Disclosure and Barring Service (DBS) check completed when they apply for a licence. They can obtain a licence if upon application they produce an enhanced DBS check that is less than 18 months old and no offences are recorded alongside a statutory declaration. The driver would then still need to undergo a new enhanced DBS check and submit it to the Council after their licence had been granted. The driver applied for a licence, the statutory declaration was dated 06 December 2016. The DBS check was dated 05 August 2016.

The Licensing Officer tracked the driver's enhanced DBS check which showed that it was sent to him on 24 February 2017. The Officer emailed him on 03

March 2017, requesting it to be sent to her but she did not receive a reply. On 27 June 2017, the matter was referred to the Enforcement Officer who sent a letter to the driver in the first class post. This letter reflected the Licensing Officer's email correspondence and warned him that if he failed to submit the DBS check by 11 July 2017, then the matter would be referred to the Licensing and Environmental Health Committee.

The driver made contact with the Council on 19 July 2017, when he confirmed that he still wanted his licence and would deliver his DBS to the Council by the end of the week. However, he failed to present the DBS to the Council and has made no further attempt to contact the Council with an explanation for this.

The driver has not attended before us today and there has been no further contact with the Council. We have had to consider most carefully whether this Committee can place any trust and confidence in him as a licensed driver within the District of Uttlesford. Unfortunately, the answer has to be no, and we therefore revoke the applicant's licences under S61-(1)(b) of the 1976 Act as he is no longer a fit and proper person to hold them.

There is a right of appeal against this decision which must be exercised within a period of 21 days and during this period the licences remain in force. Were the licences not still in the Council's possession we would have to consider whether it was in the interests of public safety that the revocation was to be of immediate effect.

LIC13

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 6)

Members were informed that the driver had given no notice that he would attend and had not arrived for the hearing.

The Committee considered the Enforcement Officer's report in the driver's absence, seeking a determination as to whether the driver was a fit and proper person to retain a licence.

In response to a matter arising in the report, the Chairman asked why the Police were unwilling to provide details on the DVLA offences when previously they had shared such information with Enforcement officers. He asked the solicitor to draft a letter to the relevant police authority to request an answer.

Members withdrew to deliberate on a decision.

DECISION

The driver before the Panel today is for the revocation of a joint private hire/hackney carriage licence in accordance with S61- (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. He was first licensed on 24th August 2016 and his current licence expires on 31st July 2019. It was understood that he was working for Lockett's of Watford on school

contract work but they informed us on 25th July that the driver had left their employment on 14th February of this year.

On 3rd July 2017 the routine annual check carried out on all licenced drivers revealed a new conviction that had not been notified to the Council. This was a CD10 (driving without due care and attention) offence taking place on 9th December 2016 for which the driver was duly convicted on 31st May 2019, receiving nine penalty points upon his licence.

The Police were on this occasion unwilling to provide further information, The Enforcement Officer therefore carried out an internet search for the driver and found an article from the Watford Observer dated 17 June 2017, which listed recent court cases. According to the article, the driver was given fines and costs of £569 in addition to the nine penalty points on his licence. The Enforcement Officer wrote to the driver on 26 July 2017, requesting a meeting to discuss the matter. The letter asked the applicant to contact the Council to arrange the meeting within seven days. The letter also informed the driver that failing to contact the Council would result in the matter being referred to the Licensing and Environmental Health Committee. The driver has failed to contact the Enforcement Officer.

Since the driver's licence has been endorsed with nine points in respect of a single offence he no longer meets UDC's Licensing Standards for drivers. Appendix A, para 2 of the Council's Policy states that:-

"No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence"

Furthermore, condition 18c of Appendix G further requires drivers to notify UDC in writing of:-

"Any convictions, cautions, or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice"

We note that the driver has fallen below the Council's licensing standards in two respects, and he has also failed to co-operate with the Licensing Department. These are serious matters, and the primary function of this Committee is of course the protection of the public.

However, driving without due care and attention is a very serious matter and he has both nine points on his licence and received a substantial fine. We cannot overlook this, and accordingly we have no alternative but to revoke the applicant joint private hire/hackney carriage licences under S61(1)(b) of the 1976 Act as he is not a fit and proper person to hold them.

There is a right of appeal to the magistrate's court within 21 days against this decision and during this time period the licences remain in force. However, in cases where we consider it necessary for the protection of the public, we can

revoke the licences with immediate effect. Given the seriousness of the offence we do so in this case under section 61(2B) Local Government (Miscellaneous Provisions) Act 1976.

LIC14

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 8)

The Chairman agreed to move Item 8 forward in proceedings as the applicant had travelled from Hampshire.

The procedure for determining private hire drivers' licences was read and the panel was introduced to the applicant.

The Committee considered the report of the Licensing Officer.

At the invitation of the Chairman to make a statement, the applicant said that whilst the offence was a long time ago, he had learnt from his mistake. He had held positions of responsibility in the past, including as a teaching assistant, demonstrating that he would be a suitable driver for school contract work if granted a licence.

Members withdrew to deliberate on a decision.

DECISION

The driver's application dated 26th July 2017 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from 24 x 7 (Hants) doing school contract work.

In completing the application form, the applicant disclosed a number of offences. The enhanced DBS check dated 17th July 2017, confirmed his disclosures, and revealed the following matters:-

- 1) 2.5.73 – Assault Occasioning ABH x 1, Breach of the Peace – Godalming Juvenile Court - £10.00 fine, 12 month bind over.
- 2) 7.12.76 – Police Assault x 1, Assault Occasioning ABH x 1 – Surbiton Crown Court – 3 months imprisonment to run concurrently/£100 x 2 fine or 2 months imprisonment in default.

He also disclosed a 1993 motoring offence not included upon the DBS.

As a consequence, the applicant does not meet Point 5 of the Council's Licensing Standards, which state that a driver must have:-

“No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed.”

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In the course of a telephone interview with the Licensing Officer on 28th July 2017, the applicant stated that the 1976 offences had taken place when he was just 18 years old. He was part of a group that had been ejected from a disco, his brother had publicly rebuked him, and other people had then intervened as a result of which the brothers and one other had been arrested, spent the night at Feltham YOI, and had been produced at Court the following morning.

He has not been in trouble since and has held a number of positions of trust, his last job being that of a teaching assistant, from which he had to take medical retirement.

Unfortunately in aggregate, these are serious matters and although they took place many years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee. Our primary role is protection of the public.

We have listened to what the applicant has to say and we have read the material provided most carefully. We believe that he has turned his life around and accepts responsibility for his previous actions. We also note that his last job was working with children.

Accordingly we grant this application, and the applicant will receive the paperwork in due course.

LIC15

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 7)

The procedure for determining private hire drivers' licences was read and the panel was introduced to the applicant relating to Item 7.

The Committee considered the report of the Licensing Officer.

At the invitation of the Chairman to make a statement, the applicant said he was shocked to hear of his own past, even though it was many years ago. In response to a question from Councillor Hicks, the applicant confirmed that the 6 points accrued on his licence in 2016 was due to the single insurance offence outlined in the report.

The Chairman asked why he wanted to move to Saffron Walden. The applicant said he wanted a fresh start in a new town and he had a job waiting for him in Saffron Walden if he was granted a licence. Due to ill health he could no longer continue working as a roof tiler, although his condition would have no adverse impact on his driving ability.

Members withdrew to deliberate on a decision.

DECISION

The driver's application dated 2nd August 2017 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from Abel Cars of Saffron Walden.

Enclosed with the application was an enhanced DBS check dated 8th July 2016, bespoken by St Edmundsbury Borough Council for the purposes of applying for private hire/hackney carriage drivers licences.

It revealed that the applicant does not meet paragraph 5 Appendix A of the Council's Licensing Standards, which state that a driver must have:-

"No criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed."

The applicant's Enhanced DBS Check revealed the following matters:-

- 1) 24.7.81 – Burglary and Theft x 3 – Bury St Edmunds Crown Court – Borstal Training
- 2) 8.12.82 – Theft x 5 – Haverhill Magistrates – fines totalling £120 and six months disqualification from driving.
- 3) 23.3.84 – Burglary and Theft x 3, TWOC x 1 – Bury St Edmunds Magistrates – 18 months Youth Custody to run concurrently, plus 18 months disqualification from driving.
- 4) 7.11.86 – Burglary and Theft – Bury St Edmunds Crown Court – 18 months Youth Custody.
- 5) 27.8.86 – Burglary and Theft – Haverhill Magistrates – 2 years probation plus £45 compensation order.
- 6) 30.12.87 – Theft from vehicle, breach of probation order – Stowmarket Magistrates – financial penalties totalling £117, probation order continued.
- 7) 12.4.89 – Theft – Halsted Magistrates – 2 years probation order, £500 compensation order.
- 8) 18.2.92 – Handling x 1, Theft x 1, Assault occasioning ABH x 1 – Bury St Edmunds Crown Court - 80 hours community service x 2 running concurrently, 20 hours community service to run consecutively.
- 9) 22.9.94 – Fraudulently using Vehicle excise Licence, failure to surrender to bail – West Malling Magistrates - £153 fine, £53 costs.
- 10) 5.8.02 – (under the name of Grey) – Police assault – Haverhill and Sudbury Magistrates – Community Rehabilitation Order 6 months.
- 11) 4.12.02 – (under the name of Grey) – S4(1)(a) Public Order Act, driving without insurance or MoT, motoring offences x 2 – Haverhill and Sudbury Magistrates – 12 months conditional discharge plus penalty points.

On 28.11.11 the applicant also accepted Police cautions in respect of S5(1)(a) Public Order Act 1986 and S127(1)(A) Communications Act 2003 which meant he admitted committing the offences.

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

The applicant was interviewed by the Licensing Officer regarding these matters on 2nd August 2017. However, he rang the Licensing Officer a couple of days after the interview to advise that he had remembered that he had 6 points endorsed on his licence which he had forgotten to declare on his application form. A check carried out showed that the conviction date was 26 February 2016 for an offence on 29 August 2015

However, paragraph 2 of Appendix A of the Council's Licensing Standards states there should be:-

"No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence."

The applicant explained that he had a van at the time for which he had fully comprehensive insurance. When his van broke down he borrowed his sister-in-law's car believing he was covered third party by his own insurance to drive someone else's vehicle with the owner's consent. Although the applicant claims this clause was on his insurance policy he says the insurance company maintained its repudiation of liability.

Under interview, the applicant was asked to give some background to the convictions and in particular to explain what had happened on 24 July 1981 and 23 March 1984. He explained that he had 2 older brothers (one 8 years and one 10 years older than him). His brothers were always in trouble and were a bad influence on him as he felt pressure to emulate them and follow in their footsteps. When he left school he had hoped to go into the navy as a trainee engineer, but was refused as he had been in trouble. He was 17 at the time of the first conviction for Burglary and Theft Dwelling and Aggravated Burglary. The applicant explained that his grandmother had died several weeks before the incident. He went to the house to confront a man who had been verbally abusive to his grandmother over a period of years. Someone else opened the front door and the applicant pushed past him and started punching the doors and walls in frustration as the man he wanted to confront had got away. The applicant was sentenced to between 6 months and 2 years in borstal and served about 13 months. When he came out of borstal the applicant explained that there was not much work about and he got involved with his brothers, breaking into houses to steal money from the electricity meters. In March 1984 he attended Bury St Edmunds Magistrates court and was sentenced to 18 months youth custody. Whilst in custody he and his brothers attended court for the offence of Burglary and Theft – Non Dwelling (conviction 4 on the DBS). He pleaded guilty to this offence so that the evidence against his brothers would be withdrawn and they got off.

Between 1986 and 2002 the applicant worked as a roof tiler. He settled down with a partner and had 3 children. During this time he had some minor

convictions for handling, theft and motoring offences. The conviction in 2002 (conviction 11) for using threatening, abusive insulting words or behaviour with intention to cause fear occurred after he split up with his partner in 2001 as he was going through a bad time and got into trouble again. He and his ex-partner are now on friendly terms. Between 1989 and 1992 the applicant was licensed by St Edmundsbury Council as a taxi driver and had his own vehicle. He looked at becoming re-licensed with St Edmundsbury in 2016 and passed all of their tests with flying colours, but did not complete the process due to ill health. Once he was fit to drive his documents were out of date.

Unfortunately in aggregate, these are serious matters and although the overwhelming majority of them took place some years ago, I must emphasise that the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

We have read the material provided most carefully. We have also listened to the applicant's submissions to us and though we note that the applicant has held a licence between 1989 and 1992, since then there has been offending, and of course we also take into account the non-declaration of the February 2016 motoring offence.

The primary function of the Committee is the protection of the public and we have anxiously asked ourselves whether the applicant is a fit and proper person to hold private hire/hackney carriage drivers licences within the District of Uttlesford. Unfortunately we have concluded that he is not. Accordingly we must refuse this application.

LIC16

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 9)

Members were informed that the driver had given no notice that he would attend and had not arrived for the hearing.

The Committee considered the Enforcement Officer's report in the driver's absence, seeking a determination as to whether the driver was a fit and proper person to retain a licence.

Members withdrew to deliberate on a decision.

DECISION

The application before the Panel today is for the revocation of a joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The driver was first licensed on 22nd July 2016 and his current licence expires on 30th June 2019. It is understood that he is working for Lockett's of Watford on school contract work.

On 5th June 2017 the routine annual check carried out on all licenced drivers' revealed two new convictions that had not been notified to the Council. These were:-

A) an SP50 (speeding on a motorway) offence taking place on 15th September 2016 for which the driver was duly convicted on 23rd March 2017, receiving three penalty points upon his licence, a £200 fine and ordered to pay a victim surcharge and costs, and

B) an MS90 (failure to give information as to the identity of the driver) offence on 24th November 2016. The driver was convicted of this offence on 26th April 2017 and received six penalty points, fined £660 and again ordered to pay a victim surcharge and costs. .

The Police were unwilling to provide further information. However, HMCTS supplied the following information:-

SP50 offence- Cheshire Police brought forward the prosecution as the driver was caught travelling at 62mph in a 50mph speed limit on the M6. The driver did not respond to the single justice procedure and the case was proved in his absence. He was fined £220, a victim surcharge of £30 and costs of £100 and given three points on his licence.

MS90 offence – Hertfordshire Police brought forward the prosecution as the applicant failed to give information regarding the identity of a speeding vehicle in Watford. The case was proved in his absence and he was fined £660, a victim surcharge of £66 and costs of £85 and was given six penalty points on his licence.

The driver has failed to respond to all attempts by the Enforcement Officer to contact him and he has not attended before us today.

Since his licence has been endorsed with six points in respect of a single offence and he has been ordered to pay substantial fines, he no longer meets UDC's Licensing Standards for drivers in two respects.

Appendix A, paras 2 and 7, of the Council's Policy respectively state that:-

"No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence"

And

"No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974"

Furthermore, condition 18c of Appendix G further requires drivers to notify UDC in writing of:-

"Any convictions, cautions, or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points

upon the driver's licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice”

The driver has twice breached this requirement.

We note that the driver has fallen below the Council's licensing standards in one respect, breached his licensing conditions and he has also failed to co-operate with the Enforcement Officer's investigation. These are serious matters, and the primary function of this Committee is of course the protection of the public.

However, these are very serious matters and he has both nine points on his licence and received two substantial fines. We cannot overlook this, and accordingly we have no alternative but to revoke the driver's joint private hire/hackney carriage licences under S61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 as he is not a fit and proper person to hold them.

There is a right of appeal to the magistrates' court within 21 days against this decision and during this time period the licences remain in force. However, in cases where we consider it necessary for the protection of the public, we can revoke the licences with immediate effect. Given the short timescale over which the applicant acquired nine points we are satisfied that this is such a case under section 61(2B) Local Government (Miscellaneous Provisions) Act 1976.

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The meeting ended at 11.45am.