

EXTRAORDINARY LICENSING COMMITTEE held at 2.30 pm at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 30 MAY 2007

Present:- Councillor E W Hicks – Chairman.
Councillors, R M Lemon and J I Loughlin.

Also present to observe:- Councillors E L Bellingham-Smith, J E Hudson
D G Perry and A D Walters.

Officers in attendance:- M Hardy, C Nicholson, Wendy Palmer and
C Roberts.

LC1

CONSIDERATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee was asked to consider whether or not to revoke a licence under Section 61 (1) (ii) Local Government (Miscellaneous Provisions) Act 1976 on the basis that the licensed private hire driver had been convicted of an offence under Section 57 (3) Local Government (Miscellaneous Provisions) Act 1976 whilst being the holder of his valid licence.

The Chairman introduced the Panel and the Council's Solicitor to Mr Cheung who was present with his employer and representative Mr Almond. The Council's solicitor explained the procedure to be used for the hearing.

In answer to a question from the Licensing Officer Mr Cheung confirmed that he had received a copy of the Licensing Officer's report. The Licensing Officer added that Mr Almond of Central Cars would speak on behalf of Mr Cheung.

The Licensing Officer then outlined the matters prompting the review as follows:-

On 9 November 2006 Mr Cheung had applied for an Uttlesford Private Hire Driver's Licence. The application form asked whether he had ever been refused a licence or had one revoked or suspended and Mr Cheung had answered 'No'.

He had in fact been suspended from driving by the Licensing Committee of Harlow District Council for a period of 2 months for operating a Private Hire Vehicle without the appropriate licence being in force. At that time Mr Cheung had lodged a notice of appeal with the Essex Magistrates Court Service which allowed him to continue to operate pending the outcome of the appeal.

The appeal had been dismissed and Mr Cheung ordered to pay costs of £470. Suspension of his Private Hire Driver's Licence had then taken effect.

Information was made available to this authority of this suspension, whereupon he was interviewed by Officers. He was later summoned to

appear before the Magistrates for the offence of making a false declaration to obtain an Uttlesford licence and again appeared before Harlow Magistrates where he pleaded guilty and was fined £100 and ordered to pay £50 costs. In mitigation Mr Cheung told the Court that he had been distracted when he completed the application form due to his wife's serious illness and that he was looking after their children.

The Licensing Officer added that the question to be resolved by the Committee now was whether or not Mr Cheung remained a fit and proper person to hold an Uttlesford Private Hire Driver's licence.

Members had no questions of the Licensing Officer.

Mr Almond spoke on behalf of Mr Cheung, explaining that he had known Mr Cheung for some years and had noticed that he had domestic difficulties due to his wife's illness and that he was also being oppressed by competing drivers in Harlow. Mr Almond had therefore encouraged Mr Cheung to move his business to Uttlesford, and had found him a hard working, amenable and willing driver. He considered the offences had much to do with Mr Cheung's limited English, the domestic and financial demands on him at the time and the unfair treatment he had received from some drivers.

Mr Cheung confirmed that at the time of the problems with his Harlow licence he had had financial problems due to substantial bills for car repairs. He had been struggling to maintain an existing contract and had been seriously considering selling the car, whose licence lapsed as it had cost him a great deal in maintenance/repairs. The lapse of licence had happened during the time when the car was off the road.

In answer to a question from the Chairman Mr Almond confirmed that Mr Cheung did understand the standards of service required by the Council. He thought that Mr Cheung, who worked long hours for his wife and family, had simply made a mistake in the case of each of the counts. In answer to further questions he added that Mr Cheung did not work for excessive periods but that he was always available and could be relied on to meet unexpected calls at anti-social hours.

In answer to a question from Councillor Lemon Mr Cheung explained that he had been licensed to drive in Harlow and had also had a driving company there. At the time he had regarded the costs etc imposed at Harlow Magistrates as the penalty. His language had hindered understanding of the suspension details.

In answer to a question from the Licensing Officer Mr Cheung confirmed that he realised the reason for the suspension was for using an unlicensed vehicle. Mr Almond confirmed that since 28 November 2006 Mr Cheung had not been in breach of any of the conditions of the licence.

In answer to a question from Councillor Loughlin Mr Cheung explained that it was just the Harlow District Council Vehicle licence which had run out, not his

driver's licence. It was noted that the Harlow Council did not issue vehicle licence reminders unlike Uttlesford. Also, Harlow District Council had only suspended Mr Cheung's driver's licence whereas they might have prosecuted Mr Cheung if they had thought that proportionate.

The Chairman of the Committee then invited Mr Cheung to make a final statement and he said that he had nothing further to add.

LC2 **EXCLUSION OF THE PUBLIC**

RESOLVED that under Section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of Exempt Information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

LC3 **CONSIDERATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The press public and observers were then recalled to the meeting and the Chairman conveyed the decision of the Committee.

He said that the Committee had deliberated and decided in this instance to allow Mr Cheung to retain his licence to drive a taxi in Uttlesford but Mr Cheung must observe religiously all the regulations and details he was required by his licence to observe, or he would be brought back before the Committee.

Mr Cheung was being given this chance because the Committee thought his actions had presented no risk to his customers. He alone had suffered for his errors.

LC4 **DETERMINATION OF AN APPLICATION FOR A PERMIT FOR AMUSEMENT WITH PRIZES MACHINES AT PREMISES KNOWN AS THE KINGS ARMS PUBLIC HOUSE, STATION ROAD, STANSTED**

The Committee was asked to determine an application, by Essex Leisure on behalf of Punch Taverns Ltd, to permit three Amusement with Prizes (AWP) Machines under the Gaming Act 1968 for The Kings Arms, Station Road, Stansted.

Mr R Mead was present on behalf of the Applicant.

The Licensing Officer explained that until the implementation of the Licensing Act 2003, the Council only issued AWP permits for premises that were not licensed to sell alcohol and were not arcades. Magistrates used to issue the other gaming machine permits but following the introduction of the Licensing Act, licensing authorities had become responsible for granting AWP permits to

alcohol licensed premises as well. The function of granting amusement with prizes permits was however still carried out under the statute of The Gaming Act 1968 and would remain so until that Act was replaced by The Gambling Act 2005 on 1 September 2007. If Members were minded to grant the application as the premises were licensed under the Licensing Act 2003 they must impose conditions that the machines:-

(a) were located on premises which contained a bar at which alcohol was served for consumption on the premises (without a requirement that alcohol was served only with food), and

(b) were made available for use only at a time when alcohol might be supplied in reliance on the premises licence under Part 3 of the Licensing Act 2003. (Gaming Act 1968 Sch 9 paragraph 10A). A right of appeal lay to the Crown Court

He added that the Landlord's reason for wanting an additional machine was the increased level of demand on the premises for the machines they already had. The machines were 'all cash machines' with a maximum stake and a maximum prize. A premises plan showed the position of the two machines currently permitted, and the proposed location of the third machine.

Mr Mead gave updated figures for maximum stake (50 pence), and maximum prize (£35), and confirmed that the Licensee thought there was an unmet demand. He added that the Licensee was trying to enhance income in view of the smoking ban. The Brewery was also interested in this move and it had been noted that income had increased and people were queuing to play the machines.

In answer to questions from the Chairman the Licensing Officer confirmed that the Licensing Act's four licensing objectives were not to be taken into account as regards AWP permits and he explained that The King's Arms was a tenanted public house. Mrs Nicholson added that the premises licence was held by Punch Taverns, as would be the AWP permit, so although the machines were owned by Essex Leisure, the Council's concerns about use of the machines by those under age would be directed to, and would be the responsibility of the premises licence and permit holder.

Mr Mead was invited to speak about the spread of use of fruit machines and he described the analysis done by the Licensee to establish demand. He informed the Committee that an application had been made for four permits at a public house in a neighbouring authority area. He confirmed in answer to a question that the machines would be placed within sight of the bar.

LC5

EXCLUSION OF THE PUBLIC

RESOLVED that under Section 100A (4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of Exempt

information , as defined in paragraph 4 of Part 1 of Schedule 12A of the Act.

LC6

DETERMINATION OF AN APPLICATION FOR A PERMIT FOR AMUSEMENT WITH PRIZES MACHINES AT PREMISES KNOWN AS THE KINGS ARMS PUBLIC HOUSE, STATION ROAD, STANSTED

The press and public were then recalled to the meeting and the Chairman conveyed the decision of the Committee.

He said that the Committee could see no reason to object to the application and accordingly permission would be granted for three machines to be placed in the King's Arms at Station Road, Stansted in accordance with the conditions set out in the report.

The meeting ended at 3.40 pm.