

**EXTRAORDINARY LICENSING COMMITTEE held at COUNCIL OFFICES
LONDON ROAD SAFFRON WALDEN at 11.30am on 27 SEPTEMBER 2010**

Present: Councillor E W Hicks – Chairman.
Councillors D G Perry and A D Walters.

Officers in attendance: M Chamberlain (Enforcement Officer), M Hardy
(Licensing Officer), M Perry (Assistant Chief Executive),
R Procter (Democratic Services Officer),
D Scales (Enforcement Officer).

LC39

**DETERMINATION OF A PRIVATE HIRE DRIVER'S AND OPERATOR'S
LICENCE**

The Chairman welcomed to the meeting Mr Kweder, his representative Mr Miller, and Mr Kweder's two character witnesses, Mrs Hill MBE and Mrs Roberts. He introduced the Members of the panel, and then invited the Licensing Officer to present his report.

The Licensing Officer asked Mr Kweder whether he had received and read a copy of the report before the Committee. Mr Kweder replied that he had read the report.

The Licensing Officer referred the Committee to the report. The report gave details of the private hire driver's and operator's licences held by Mr Kweder, and gave an overview of the 'wheelchair friendly' private hire vehicle business which Mr Kweder operated. The report set out details of the offence of using an unlicensed private hire vehicle for which he had been convicted upon pleading guilty at Harlow Magistrates' Court on 27 August 2010.

The Licensing Officer explained that in view of this conviction Mr Kweder no longer met the Council's licensing standards for drivers, in so far as he was in breach of condition 4. This condition stated that a person shall not have a criminal conviction which is not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974, and not to have been conditionally discharged for an offence within the last five years.

The Licensing Officer said Mr Kweder had been open and transparent during the interview he had conducted with him about the incident. He drew attention to the statement Mr Kweder had submitted regarding the reasons for acting in the way he did.

Mr Miller, representing Mr Kweder, said his client had not been clear at the time of interview that determination of both his licences would be required, but only of his private hire driver's licence. The Licensing Officer confirmed that upon receiving legal advice that both licenses were to be the subject of determination, he had sent the report confirming this fact to Mr Kweder.

Mr Miller asked whether his client had complied with advice he had sought from the Council at the time he had established his business in the district, and the Licensing Officer confirmed he had done so.

Mr Miller asked officers to confirm his client had not been the subject of any previous disciplinary hearing before the Council. The Licensing Officer confirmed that this was so.

Mr Miller pointed out that Mr Kweder supplied a service for vulnerable people in the Uttlesford district, and asked officers to confirm that they had recommended his client's business to persons making enquiries about that kind of transport. The Licensing Officer said that Mr Kweder's business was one of a number details of which had on occasion been given to those making enquiries for a certain type of transport.

Mr Miller asked how the information regarding Mr Kweder's conviction had become known to the Council. The Licensing Officer replied this information had been received from Essex County Council.

In reply to a question by Mr Miller regarding whether one source of information was a complaint from another taxi driver, officers replied that the information had come to the Council from ECC.

In reply to a question by Mr Miller regarding whether Mr Kweder had retained his contracts with ECC, the Licensing Officer replied he believed one of the two contacts had been withdrawn.

At the invitation of the Chairman, Mr Miller then made a statement on behalf of Mr Kweder, a written copy of which was supplied to the Committee. The statement gave full details of the business Mr Kweder operated in Uttlesford, which provided transport for disabled passengers, many of whom required wheelchair transportation. Mr Miller called upon the two character witnesses to speak in support of Mr Kweder. The witnesses explained they had benefitted from the specialist transport service Mr Kweder provided for many years, and they had the utmost trust in him as a person of integrity. Mr Miller supplied further written character references.

Mr Miller then described the circumstances in which Mr Kweder had used the unlicensed vehicle on 7 June, which he explained was primarily to alleviate the distress his passenger was experiencing due to a delay caused by road works on the journey in question. Mr Kweder tabled a map showing the route he had taken to avoid the road works. Mr Miller said his client did not consider he was breaking the law by his actions; that he received no financial advantage from acting in this way; that the vehicle he had used was covered by private insurance; and that he believed he was acting in the best interests of his passenger at the time.

The Licensing Officer asked Mr Kweder whether he regretted the use of the unlicensed vehicle, and Mr Kweder replied that he did.

Councillor Perry declared a personal interest in that he had been acquainted in the past with the passenger and her mother. He asked about the way in which Mr Kweder dealt with his passenger.

At 12.05pm the Committee withdrew to consider its decision, and returned at 12.15pm.

Decision

The Chairman gave the Committee's decision, as follows.

'The Committee has considered everything said and it is quite obvious on hearing the circumstances that an offence was committed. Mr Kweder received the appropriate sentence from the Magistrates' Court, and by the same token an offence has been committed under the conditions of Uttlesford's licence of private hire vehicles. However, Members are impressed that citizens of good standing had written, and appeared before the Committee, to support Mr Kweder and testify to his good character and the excellent work he performs on behalf of the community. However, the Committee is concerned that Mr Kweder apparently did not understand he was committing an offence. The Committee recommend that he try to gain an understanding of the licensing conditions. The Committee impose no sanctions as Members are content Mr Kweder should continue to hold his licenses. However it should be stressed the Committee expect drivers to read the conditions which are laid down, and to understand them. I therefore recommend that Mr Kweder pay regard to these matters in the future as Members would not like to see him at a similar hearing.'

LC40

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed Mr Bloomfield to the meeting. In reply to a question by the Licensing Officer, Mr Bloomfield confirmed he had received and read the report.

The Licensing Officer then referred Members to the circumstances, as described in the report, around an application to renew a private hire driver's licence. The renewal notice completed by Mr Bloomfield disclosed a conviction on 13 January 2010 for the offence of failure to give information as to the identity of a driver when requested. The Magistrates' Court imposed a fine of £120 and 6 penalty points on his DVLA driver's licence. The imposition of the points on his licence brought Mr Bloomfield into conflict with the Council's current licensing standards, which indicated that where 6 or more points are ordered to be endorsed on a DVLA driver's licence, then an application for renewal of a private hire driver's licence should be refused. Further, Mr Bloomfield had not informed the Council of his conviction within 7 days as required under the Council's private hire driver license conditions. However, Mr Bloomfield had complied with the requirement to make this disclosure when submitting his application for renewal of that licence. He had supplied documents which were included in the papers before the Committee in mitigation.

Members had no questions at this point, and the Chairman invited Mr Bloomfield to speak. Mr Bloomfield said he had not been aware of the requirement to notify the Council of the conviction, and had not deliberately withheld this information, although he apologised for omitting to give such notification. He described the nature of his business, a children's day nursery, for which he only occasionally needed to drive under his private hire driver's licence. He described the circumstances of the incident for which the conviction had been imposed, regarding which he said he felt aggrieved, as he felt he had done his best to co-operate with the prosecution's requests for information. He said he did not accept that the offence of which he had been convicted was a 'serious motoring offence', and therefore he did not consider he was in conflict with Clause 2 of the Council's licensing standards. He believed the imposition of the fine of £120 and the 6 penalty points was due to the Court having no discretion to impose a lesser penalty. He said he had never driven dangerously, and that his having a private hire driver's licence would not endanger anyone, particularly as he rarely had occasion to drive for the nursery business.

The Licensing Officer asked Mr Bloomfield to clarify two points: whether his reference to a 'court' was to the Magistrates' Court, and whether at the time of the offence it had been his own private vehicle which was being driven. Mr Bloomfield answered in the affirmative to both points.

Councillor Perry sought clarification of certain points made in Mr Bloomfield's background papers.

At 12.40pm the Committee withdrew to consider the matter, and returned at 1.05pm to deliver its decision.

Decision

The Chairman gave the decision as follows:

'The Committee accept the submission of Mr Bloomfield that the offence of which he was convicted does not fall within the definition of a serious motoring offence and therefore he still meets the Council's standards for licensed drivers.

However the Committee do not accept the explanation of the circumstances of the offence. The Committee believe that Mr Bloomfield was fully aware of who was the driver at the time of the offence. Had the Magistrates considered otherwise they would have imposed an absolute discharge rather than a fine.

The Committee are also concerned that the condition regarding reporting convictions has not been complied with. Mr Bloomfield had no satisfactory explanation for this.

In the circumstances the Committee feel that a suspension of the licence is appropriate for any other reasonable cause namely a breach of condition of the licence.

In determining the length of the suspension the Committee must act proportionately. Any suspension should not cause the driver unnecessary hardship. Mr Bloomfield has explained that he does not drive for a living and he will therefore not lose any income as a result of a suspension. Indeed he says that he rarely drives a private hire vehicle and therefore any suspension would be a minor inconvenience only. In the circumstances the Committee have determined that the licence should be suspended for a period of 28 days.'

The Assistant Chief Executive informed Mr Bloomfield of his right to appeal within 21 days from the date he was deemed to have received written notification of the decision.

LC41 **EXCLUSION OF PRESS AND PUBLIC**

RESOLVED that the press and public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information within the meaning of s.111 I and paragraph 1 of Schedule 12A Local Government Act 1972.

LC42 **DETERMINATION OF A PRIVATE HIRE OPERATOR'S AND DRIVER'S LICENCE**

The Enforcement Officer referred the Committee to the report, which invited the Committee to determine whether the private hire operator's and driver's licences held by the individual in attendance should be suspended, revoked and/or not renewed. The grounds on which such options were to be considered were that there had been conduct on the part of the operator which appeared to the District Council to render him unfit to hold an operator's licence and for any other reasonable cause. The report included a summary of an interview conducted under caution, in which the operator admitted receiving a forged disabled parking badge from another individual. He had also attempted to purchase another forged disabled badge.

The Assistant Chief Executive drew to Members' attention an email he had received from the operator dated 20 September 2010, which had been copied to the Committee. This email referred to the operator providing work for 'at least 20 drivers'. The Assistant Chief Executive said he had sought from the operator a list of the names of such drivers, and that the list supplied in response showed the majority were licensed operators in their own right. He said five of the drivers listed were not licensed by this authority, and this matter was now the subject of investigations by the enforcement team.

The Chairman thanked officers, and invited the operator to put any questions he might have.

The operator agreed that the contents of the Enforcement Officer's report were accurate, but said there were mitigating circumstances.

Members asked about allegations that unfounded accusations had previously been made to the Council about the operator. The Enforcement Officer said there had been an unfounded allegation some time ago that an individual employed by the operator had driven whilst not holding the appropriate licence.

The Assistant Chief Executive said he had doubts regarding the authenticity of the telephone call to his office from a Mr Marshall, referred to in the report, as his efforts to make contact with him had been unsuccessful.

The operator then tabled a document which he said related to journeys in the congestion zone he had made on the date referred to by Mr Marshall. None of the passengers listed went by this name, and he therefore asked that the Committee disregard the allegations made by an individual going by this name.

The operator then made a statement about the nature of the business he ran, the history of his connection with the individual from whom he had obtained a disabled parking badge, the circumstances in which he had accepted it and those leading up to a second blue badge being made available to him. He said he had been a managing director for over 40 years, with no blemish on his record, and that his companies did an excellent job. He said the individual from whom he had obtained the blue badge had a grievance against him.

Regarding his providing work for other drivers, the operator said he did not understand the situation regarding the necessity for such drivers to be licensed by Uttlesford, and said he had received no direction on this point.

The Assistant Chief Executive said a private hire operator was expected to know the provisions regarding private hire operators under the Local Government (Miscellaneous Provisions) Act 1976. Of the names of unlicensed drivers the operator had supplied, two records had been provided.

The operator replied he had supplied all paperwork and that there was nothing on the forms to suggest his drivers needed to be licensed by Uttlesford. He said the chairman of ULODA was not aware of such legislation.

Officers replied the conditions for a private hire driver's licence clearly stated the requirement that drivers must be licensed by this authority, and that ignorance of the law was no defence.

Members asked various questions regarding the website and name of the business run by the operator.

The Enforcement Officer asked the operator about the checks he carried out when employing a new driver. The operator replied that his PA would interview them and take a copy of the relevant licences.

The Chairman said he found it hard to understand that the operator claimed not to be aware that drivers did not need to be licensed with Uttlesford, particularly as the operator was a member of ULODA. He asked whether the

operator had asked the chairman of ULODA to support him by attending today's meeting. The operator replied he did not think he had done anything wrong.

The Committee withdrew at 1.50pm to consider the matter. At 2.20pm the Committee gave its decision.

Decision

The Chairman made the following statement:

'The operator on his own admission has acquired a forged document, namely a disabled parking badge. He also attempted to purchase another such badge this year.

The operator says he had not used the badge in this country. However whether he has used the badge or not is irrelevant.

Forgery is a serious offence of dishonesty. Handling forged documents is a similar serious offence.

In the light of the operator's admitted dishonesty the Committee are not satisfied that he is a fit and proper person to hold either a private hire operator's or driver's licence.

Under the Local Government (Miscellaneous Provisions) Act 1976 local authorities may not grant licenses to those who do not satisfy them that they are fit and proper persons. It follows that where a local authority ceases to be satisfied that a person is fit and proper his licenses ought to be revoked.

The decision of the Committee is therefore that the operator's private hire driver's licence and operator's licence shall be revoked and not renewed on expiry on 30 September.

In reaching this decision the Committee has not taken account of suggestions that the operator has been using unlicensed drivers but notes that this is the subject of a separate investigation.'

The Assistant Chief Executive informed the operator of his right to appeal within 21 days of the date upon which he was deemed to have received written notification of the decision.

The meeting ended at 2.25pm.