

**EXTRAORDINARY LICENSING COMMITTEE held at 10.30 am at the
TOWN HALL SAFFRON WALDEN on 19 APRIL 2011**

Present: Councillor E W Hicks – Chairman.
Councillors H J Asker, J E Hudson and D J Perry.

Officers in attendance: M Hardy (Licensing Officer), M Perry (Assistant
Chief Executive-Legal) and M Cox (Democratic Services
Officer).

C80 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no declarations of interest.

**C81 DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE
DRIVER'S LICENCE**

The Chairman welcomed all parties to the meeting and introduced the
Members of the Panel to the Driver Mr Burgon, his representative Mr
Drinkwater (ULODA) and Councillor Norma Simmons Mayor of Bishops
Stortford Town Council, his character referee.

The Assistant Chief Executive – Legal outlined the process to be followed in
conducting the appeal. In answer to a further question, he explained the
legal issues that he would be advising on later in the meeting

The Licensing Officer then presented his report. The case had been brought
before the committee because the driver had failed to meet the Licensing
Standard that a driver shall not have more than 3 minor motoring offences
during the last 3 years.

He outlined the background as follows. The driver had first been issued with
a Hackney Carriage/Private Hire Driver's license on 1st February 2008 to
drive on behalf of Stansted Airport Cars. He then applied to hold his own
Private Hire Operator's Licence trading as Airport Executive Cars on 15th
May 2008.

On 25th February 2010 there had been a report in the Herts and Essex
Observer of Mr Burgon being fined whilst using a mobile phone. The
Licensing Authority had not been informed in writing as required under its
licensing conditions. This matter had been dealt with under delegated
powers and his license had been suspended for 5 days. The subsequent
convictions had been properly notified.

When Mr Burgon applied to renew his 3 yearly Criminal Records Bureau it
was pointed out that his Driving Licence showed 9 penalty points within a 3
year period and that the authorities conditions were that a driver should not
have more than 3 minor motoring offences (5 or less penalty points) during

the last 3 years, and also that 12 points on his license could result in disqualification from driving.

On 4th April 2011 he informed the Authority that he had 3 more points and the Licensing Officer then interviewed Mr Burgon as to the circumstances of each of the 4 convictions. These were, on 18th July 2009 and 27 October 2009 for using a mobile phone, on 9 June 2010 for travelling at 52mph in a 40mph temporary roadwork section and on 29 March 2011 for travelling at 58mph in a temporary 40mph speed limit.

The last endorsement on his license brought him to 12 penalty points within a 3 year period, attracting possible disqualification. However the Court took the view that disqualification would cause undue financial hardship to Mr Burgon, so no disqualification was imposed.

The Licensing Officer then invited questions about his report. There were no questions from the Panel. Mr Drinkwater asked the Licensing Officer if he would agree that before the recent convictions Mr Burgon had enjoyed a period of 2 years with out any offence; he concurred with this statement. Mr Burgon asked for clarification on the council's policy on the limit on the number of minor motoring offences allowed. He was advised that the policy was for no more than 3 minor motoring offences (up to 5 points) in 3 years, regardless of the penalty imposed. Mr Drinkwater asked the Licensing officer to comment on the Colchester Magistrate Court's decision but he declined to do so as he had not attended the hearing.

Mr Drinkwater then addressed the committee on behalf of the driver and asked members not to revoke the license. Mr Burgon had demonstrated that he was capable of compliance, having informed the Licensing Authority of each subsequent conviction. With regards to text messaging on both occasions he had been reading a text message concerning his next job. This was obviously ill advised, though he said that members might wish to question the legal position with regard to receiving text messages.

There was no excuse for the excess speed in the temporary roadworks, but by way of explanation he pointed out that Mr Burgon did an annual mileage of 106,000 miles and had no accidents, so in proportion the risk was low. The decision of the Colchester magistrate's court had pointed to significant mitigation in this case. He said that Mr Burgon was genuinely regretful and apologetic about the events. He then asked him to address the committee.

Mr Burgon said the 4 incidents showed a lack of concentration and minor stupidity. This was very regrettable as he had subsequently borne the cost of a court appearance and speeding offences and he apologised to all those present that this hearing had to be called. Mr Drinkwater asked him to read to the committee the statement made at the Colchester magistrates hearing which had resulted in him not being disqualified from driving.

The statement cited the wider consequences of a driving ban, the financial hardship for him, both personally and for the future of his business and for those who worked for him. Mr Burgon then informed the committee of details

of his personal income from driving, and the income he received from his other drivers.

The Committee then heard from Councillor Norma Simons, who had met Mr Burgon through her capacity as Mayor of Bishop Stortford Town Council, when she had worked with Mr Burgon to house difficult to place people in his property. She told the committee that if the license was revoked it would have a significant impact on his income and his ability to live in the property. This would mean that the vulnerable tenants would be back on the streets. She said that Mr Burgon had put himself out to help people and it would be unfortunate that as a result of his own admitted stupidity, many people would be affected.

Mr Perry questioned the credibility of the figures given in respect of personal income from driving as they appeared to show an increase of 100% since he had interviewed him in March 2009. Mr Burgon stated that he had obtained more work through the internet and also obtained jobs through leaflet drops and advertising.

Mr Burgon then answered a number of questions put by the Licensing Officer. He confirmed that as he was no longer working for another operator he did not use a mobile phone to be informed about jobs. He also confirmed that he understood why there were speed restrictions through roadworks. He agreed that the magistrate's court had allowed him to keep his license in order that he could find other work although he felt that the chances of doing so were slim.

Councillor Perry asked why he had been driving at such an excess speed through the temporary speed limit. He replied that these were roads that he knew well and usually had a 60mph limit, he was in the process of slowing down when he had been stopped. He confirmed that he had not been carrying any passengers during any of these incidents and accepted that his driving had fallen below the standards required so far as the letter of the law was concerned.

The Assistant Chief Executive – Legal clarified that there was no question regarding the law on texting. It was an offence to send or receive written messages whilst driving.

Councillor Asker asked questions about Mr Burgon's previous driving experience. He replied that he had an internationally clean driving record and had no accidents or insurance claims in the last 15 years. His high annual mileage was due to the nature of his business, operating airport runs. Mr Drinkwater confirmed that this type of mileage was not unusual. Mr Burgon confirmed that he had received a copy of the Council's professional guidelines and knew what was expected of him as a driver.

The Assistant Chief Executive – Legal then gave legal advice in the presence of the applicant and his representative and in doing so cited legal cases that were relevant in this case. The following points were made.

The previous suspension in 2009 was not relevant to today's proceedings. The hearing was being held because Mr Burgon no longer met the Authority's Licensing standards. Members had to decide whether he was a fit and proper person to be driving a licensed vehicle. If they were not satisfied the only action they could reasonably take would be to revoke the license, as a suspension would not make the driver a fit and proper person.

As the matters before the committee were only related to motoring offences, members should only be concerned with whether the driver's license should be revoked. Mr Burgon's operator's license would not be affected.

The council was entitled to adopt its own Licensing policies and standards, as long as it dealt with each case fairly, listened to the arguments and applied any exceptions if necessary. The burden of proof was on the applicant to justify a departure from this policy.

Under the totting up process, the magistrate's court must apply a ban in the case of 12 penalty points, except in a case of exceptional hardship. In the case of Mr Burgon his statement had been taken into account. However this should not engage the Licensing Committee as its criteria was entirely different. It had a duty to protect the users of the licensed vehicles and the public and to that end had to ensure that the driver was a suitable, safe driver with a good record. The personal circumstances of the driver were not relevant to this consideration.

Mr Drinkwater was then invited to sum up. He acknowledged that Mr Burgon had transgressed over the last 12 months but pointed out that he was very hard working and had many satisfied clients. He was passionate about the trade, had seen it as an opportunity to build a career and wanted to continue to grow his business. His main concern was that he contributed 50% of his income by his own personal earnings and the loss of this would have a significant impact on the ability of his business to continue. He asked the committee to take account of the following points when deciding whether the license should be revoked. The offences had all been minor, there had been no disqualification by the magistrate's court and he had an offence free record for two years. He had made an unreserved apology and a personal pledge to be compliant and recognised the need for improved driving discipline. The revocation of the license would result in a significant loss of his personal income, a possible loss of his rental property, and reduced business sustainability.

C82

EXCLUSION OF THE PUBLIC

RESOLVED that under Regulation 14(2) of the Licensing Act 2003 (Hearings Regulations) 2005 the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public's interest so to do to permit a free and frank exchange of views between members.

The Licensing Officer, the Driver and his representatives withdrew and the Panel began to deliberate on their decision at 11.50 am.

C83

DETERMINATION OF A MATTER RELATING TO A PRIVATE HIRE DRIVER'S LICENCE

Members returned to announce their decision at 1.05 pm.

The Chairman made the following statement:-

Mr Burgon appeared before the committee for consideration of a revocation or suspension of his driver's licence as he no longer meets the council's licensing standards having committed four minor motoring offences within three years. For the purposes of the council's policy a minor motoring offence is defined as one carrying five points or less for a single offence. Since February last year Mr Burgon has accumulated four such convictions, two for using a mobile telephone while driving and two for excess speed.

With regard to the offences of using a mobile phone, Mr Burgon said he was not making calls but admits that he was reading text messages whilst driving. Although he initially pleaded not guilty to the first of these offences, he changed his plea at court to one of guilty. The committee considers that he was wise to do so. Mr Burgon did not seek to go behind the convictions today and the committee understands that as a matter of law he is not entitled to do so.

Having acquired 12 points for 4 offences, Mr Burgon faced the possibility of a disqualification under the totting-up provisions. He attended before the Magistrates and submitted a plea that a disqualification would cause exceptional hardship. The Magistrates accepted that plea and exercised their discretion not to disqualify.

Before the committee today, Mr Burgon again submitted that a revocation of his driver's licence would cause hardship. He submitted that he would lose income personally, that if he were unable to drive there could be an adverse impact upon the viability of his business and that his home could be in jeopardy.

Based upon the advice members have received, the council is clearly entitled to have a policy. This it has in the form of its licensing standards. Mr Burgon no longer meets those standards. The burden of proof is upon Mr Burgon to show that his is an appropriate case for members to depart from their policy. Mr Burgon has put forward no matters which persuaded members to do so. It was submitted on his behalf that prior to February 2010, he had had no convictions. Against that Mr Burgon committed four offences in little more than a year. It was submitted that he does a high mileage – over 106,000 miles per year. However, the committee was informed by Mr Drinkwater that such mileage is commonplace and yet the committee rarely have to consider similar cases. It also appears that Mr Burgon does not learn from his mistakes. Having been convicted of an

offence of using a mobile phone in February 2010 he received a fixed penalty notice for the same offence two months later. Having been convicted of an offence of excess speed in a temporary speed limit in road works in January 2011, he committed the same offence within three months. This latter conviction was despite the fact that on renewal of his licence the licensing officer drew Mr Burgon's attention to the nine points then on his licence and commented that a further endorsement could put his licence at risk.

Whilst the committee heard evidence of potential hardship, based on the Leeds case, no consideration of the personal circumstances of the driver are relevant except in very rare cases to explain or excuse some conduct of the driver. No such grounds have been put forward. Having found that Mr Burgon no longer meets the licensing standards, in the absence of any factors to indicate that a departure from policy is justified members are no longer satisfied that he is a fit and proper person to hold a licence. Although members do have power to suspend the concept of requiring a driver to be fit and proper is to a great extent to ensure the safety of the public. In the circumstances, a suspension would not be realistic or proportionate, nor would it be fair to the wider public who are potentially placed at risk by unsuitable drivers.

In the circumstances, members resolved to revoke Mr Burgon's driver's licence under section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause, namely that members are no longer satisfied that Mr Burgon is a fit and proper person to hold such a licence.