

Determination of a Private Hire Driver's Licence

Licensing Committee, Item 2

Committee: Licensing Committee

Date: 19th April 2011

Title: Determination of a Private Hire Driver's Licence

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Agenda Item

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Item for
decision

Summary

This report has been submitted for members to consider suspension or revocation of a private hire driver's licence in accordance with Section 61(1) (a) Local Government (Miscellaneous Provisions) Act 1976 under the heading for any other reasonable cause.

Recommendations

The Committee determine whether or not the licence should be suspended or revoked.

Background Papers

Article in Herts and Essex News dated 25th February 2010

Copy of the Licensing Standards

Counterpart Driving Licence in name of Peter Lee Burgon

Copy of current Hackney Carriage/Private Hire Driver's Licence in the name of Peter Burgon

Copy of the current Hackney Carriage/Private Hire Driver Conditions

Copy of E-Mail from Peter Burgon regarding latest conviction dated 4th April 2011

Copy of letter to Mr P Burgon from Assistant Chief Executive (Legal) dated 17th March 2011

Minutes of meeting with Peter Burgon dated 16th March 2010

Application to renew Hackney Carriage/Private Hire Driver's Licence dated 3rd February 2010 by Peter Burgon

Impact

| | |
|----------------------------|---|
| Communication/Consultation | None. |
| Community Safety | The authority has a duty only to licence drivers who are considered to be fit and proper. |
| Equalities | None. |
| Finance | None. |
| Health & Safety | None. |

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|---------------------------------|---|
| Human Rights/Legal Implications | <p>In the event of a licence being suspended or revoked a driver has the right of appeal to a Magistrates Court.</p> <p>Whilst it is legitimate for councils to have policies, they may not be rigidly bound by them and must be prepared to make exceptions to policy in appropriate circumstances.</p> <p>A licence is a possession within the meaning of the Human Rights Act and individuals are entitled to the peaceful enjoyment of their possessions. However interference with this right is permissible in accordance with the law for the public good. The licensing regime falls within this exemption.</p> |
| Sustainability | None. |
| Ward-specific impacts | None. |
| Workforce/Workplace | None. |

Situation

- 1 On 1st February 2008 Peter Burgon of Wrens Park, High Easter Road, Leaden Roding was issued with his first Hackney Carriage/Private Hire Driver's Licence to drive on behalf of Stansted Airport Cars who are based at the airport. He left that employment on 18th March 2008 and applied to hold his own Private Hire Operator's Licence trading as Airport Executive Cars and this was issued on 15th May 2008. He continues to trade under this name albeit he has moved to new premises still within the Uttlesford District.
- 2 Upon the issue a drivers licence a copy of the conditions is attached to that licence for compliance and these are framed in such a manner in order to protect the travelling public and that accurate records can be kept by the Licensing Authority. This procedure is repeated every time a driver applies to renew his Hackney Carriage or Private Hire Licence. There is a current condition that specifically states that a driver is under an obligation to inform the Licensing Authority in writing of any conviction imposed on him/her or a Fixed Penalty Notice issued against him/her or who receives an official Police Caution. This must be done within 7 days of any of these penalties being imposed.
- 3 On 25th February 2010 a report appeared in the Herts and Essex Observer giving details of a motorist being fined whilst using a mobile phone on the A414 in Hertford. The report named the driver as Peter Burgon from Hatfield

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Heath who was identified by The Licensing Authority as being a person who held a licence issued by this authority but who had failed to report the matter in accordance with his licence conditions.

- 4 On the 16th March 2010 Mr Burgon was interviewed personally by The Assistant Chief Executive - Legal for a breach of the licence conditions and for failing to disclose that there was a prosecution pending when he applied to renew his licence on 3rd February 2010. Both of these matters were dealt with by way of the delegated powers route and Mr Burgon's Hackney Carriage/Private Hire Drivers Licence was suspended for a period of 5 days between the 9th and 13th April 2010 inclusive. No appeal was made to HM Courts Service against this decision.
- 5 Subsequent convictions recorded on Mr Burgon's Counterpart Driving Licence dated 26th April 2010 and 13th January 2011 were notified to the Licensing Authority in accordance with the driver conditions.
- 6 On 30th December 2010 Mr Burgon applied to renew his 3 yearly Criminal Records Bureau Check part of that process is to examine his DVLA Driving Licence and Counterpart. This was produced in person to the author of this report who noted that currently it showed 9 penalty points within a 3 year period. The Officer pointed this out to Mr Burgon in respect of our licensing conditions one of which is that a driver shall not have more than 3 minor motoring offences during the last 3 years. A minor motoring offence being defined is where 5 or less penalty points have been endorsed on a drivers licence. In addition he reminded Mr Burgon of the provisions contained Section 35 Road Traffic Offenders Act 1988 regarding possible disqualification from driving when 12 points are accumulated with a 3 year period. He did acknowledge the advice that was given.
- 7 On 4th April 2011 Mr Burgon telephoned the author of this report to inform him that he had 3 more points endorsed on his DVLA Driving Licence taking his total to 12 within a 3 year period which breached our licence conditions and following on from that conversation he attended the Council Offices in Saffron Walden accompanied by Mr Drinkwater the same day. The Licensing Officer then interviewed Mr Burgon as to the circumstances that led to each of the 4 convictions being recorded on his driving licence.
- 8 On the afternoon of the 18th July 2009 Mr Burgon was returning from Luton Airport having dropped off a passenger and was driving along the A414 approaching Hertford when he was stopped by officers in a marked Police Car for the offence of using a mobile telephone. He was offered the issue of a Fixed Penalty Ticket but declined wishing to challenge the matter at Court. He explained that he was not making or receiving a call but was reading a text message that had come through on his phone. He did attend Hertford Magistrates Court but on legal advice pleaded guilty and was fined £100 with 3 penalty points being imposed on his licence.

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- 9 On the morning of the 27th October 2009 Mr Burgon had just dropped off a passenger at Stansted Airport when he was stopped driving by officers in a marked Police Car for the offence of using a mobile telephone. He was offered the issue of a Fixed Penalty Ticket which he accepted and was fined £60 with 3 penalty points being endorsed on his licence. He again explained that he was not making or receiving a call but was reading a text message that had come through on his phone.

- 10 At about 2am on 9th June 2010 he was driving along the Parkway in Peterborough en route to pick up some passengers in the City when travelling through some temporary roadworks which had a 40mph limit imposed on that section of road. He passed a static speed camera where his speed was recorded at 52mph. He declined the offer of being dealt with by way of the Fixed Penalty system and elected for a court appearance. Upon receipt of the summons and on legal advice he pleaded guilty and was fined £135 with 3 points being endorsed on his licence.

- 11 On 29th March 2011 Mr Burgon appeared in person before Colchester Magistrates Court charged with the offence of driving a motor vehicle in excess of a 40mph speed limit. He entered a not guilty plea and was not legally represented, but alleges that a person believed to be a Court Official suggested to him that he ought to plead guilty. He subsequently pleaded guilty and was fined £85 and had 3 penalty points endorsed on his driving licence.

- 12 As a result of this sentence this now brought him into conflict with Section 35 Road Traffic Offenders Act 1988 regarding reaching 12 penalty points within a 3 year period attracting possible disqualification from driving all types of motor vehicles however the Court took the view that disqualification would cause undue financial hardship to Mr Burgon so no disqualification was imposed.

- 13 The circumstances that led to his latest conviction occurred when he was driving to pick up a passenger in Chelmsford on a date he is unable to recall when he was seen by 2 Police Motor Cyclists travelling in roadworks along Essex Regiment Way which was subject to a 40mph speed limit and having checked his speed the equipment the Police used recorded a speed of 58mph.

- 14 In all 4 cases Mr Burgon was driving a licensed vehicle with no passengers on board however he states that there were no adverse driving conditions prevailing at the time.

- 15 Confirmation is still awaited from DVLA regarding the latest set of penalty points being imposed on his licence.

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Risk Analysis

| Risk | Likelihood | Impact | Mitigating actions |
|--|--|---|---|
| An unfit person is authorised to drive private hire vehicles in the district | 1 – Members are aware of and apply our licensing standards | 4 – Permitting unfit persons to drive may cause damage to property, personal injury or even death | The Magistrates Court did not disqualify Mr Burgon from driving on the grounds that it would cause financial hardship |

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.