

EXTRAORDINARY LICENSING COMMITTEE held at 2.30 pm at the COUNCIL OFFICE SAFFRON WALDEN on 22 AUGUST 2011

Present: Councillor E W Hicks – Chairman.
Councillors J Davey, J Loughlin and V Ranger.

Officers in attendance: M Chamberlain (Enforcement Officer), M Perry (Assistant Chief Executive-Legal) and C Roberts (Democratic Services Officer).

Also present Mr P. Haynes (the Driver) and Mr Clowser, solicitor

LC14

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 and his representative.

The Enforcement Officer then presented his report, to the following effect.

The case had been brought before members to consider revocation of a private hire driver's licence in accordance with Section 61(1) (b) Local Government (Miscellaneous Provisions) Act 1976 ("for any other reasonable cause").

In 2006 the Driver had been issued with his first Private Hire Driver's Licence to drive on behalf of Checker Cars based at Stansted Airport.

The driver signed a copy of the current conditions at the time of issue of the licence to acknowledge receipt and compliance with those conditions. The licence was renewable annually, and the Driver continued to hold the licence thereafter.

On 7 April 2010 the Driver had appeared before the Assistant Chief Executive-Legal for making a false statement to renew his licence, failing to notify the authority of 3 penalty points endorsed on his driving licence for an offence of exceeding 30mph, and failing to notify the authority of his change of address. These matters amounted to failing to comply with the conditions of his Private Hire Driver's Licence. The Assistant Chief Executive found that there had been a breach of the conditions and imposed a 7 day driving suspension. No appeal was made by the Driver to HM Court Service against this decision.

On 23 May 2011 Hertfordshire Constabulary advised the Council that the Driver was to appear before a Magistrates Court on 6 June 2011 charged with possession of a Class A controlled drug.

On 19 July 2011 the Driver attended the Council Offices, Saffron Walden where he gave the explanation that whilst at The Black Lion Public House he had gone alone into the gents toilets at the premises and found a person who he knew outside one of the cubicles who gave him what he describes as a wrap. At that point the door staff employed at the premises suspected that a drugs deal may be taking place and asked both men to leave the premises. The driver began to argue with the door staff who called the Police.

Upon arrival of the Police he admitted to the officers that he was in possession of a controlled substance which he believed to be cocaine, resulting in him being detained for a drugs search. He states that he handed the wrap to the officers who arrested him on suspicion of illegal possession of a controlled substance.

He was conveyed to Hoddesdon Police Station where he denied he was dealing in drugs and added that he had committed no offence as he had being given the substance whilst using the gents toilet at the public house

The substance was analysed and confirmed as cocaine.

At East Hertfordshire Magistrates Court the Driver, charged with the one offence of unlawful possession of a Class A controlled drug, pleaded guilty. In mitigation it was argued that he was not a drugs user and had not used the drug whilst it was in his possession; he had retained the substance only out of curiosity. Had he not consumed alcohol he would have immediately distanced himself from the other party he met in the toilet. The Court imposed a fine of £350, with a £15 Victim Surcharge and costs amounting to £400. An order was also made for the destruction of the cocaine.

The Driver's current employer would still retain his services if no further action was taken by the Committee.

The report concluded that the Council had adopted standards which it expected drivers licensed by the Uttlesford District Council to meet whilst a licence was held. Although each case would be dealt with on its individual merits, licence holders who ceased to meet the standards were likely to have their licence suspended or revoked or not renewed on application. One of those standards was that the driver should have no criminal convictions which are not deemed spent within the meaning of the Rehabilitation of Offenders Act 1974. By virtue of his conviction the Driver failed to meet this standard.

In answer to a question from Councillor Loughlin the Assistant Chief Executive-Legal explained the operation of the "spent" provisions in the case of fines.

The Driver's representative had no questions for the Licensing Officer.

The Driver with the assistance of his representative put his case and answered questions from Members.

The Driver confirmed that he was employed by Checker Cars; he had a flexible working shift pattern because he had bought his car from Checker Cars. The Driver explained in answer to a question that he had been alone when he went into the toilets. He recognised someone in there. That person was being asked to leave by the door staff. The Driver thought the person knew he was about to be stopped by the door staff so off-loaded the wrap to the Driver. The door staff were in the cubicle with the person and the Driver was standing at the urinals with his back to the person. The person saw a familiar face and slapped the wrap into the Driver's hand. The Driver thought the person was a regular drug dealer. The Driver explained in answer to a question that he had been drunk at the time. He was in the toilets when the door staff came in. The person was in there before the Driver.

The Assistant Chief Executive-Legal drew the attention of the meeting to the Council's Licensing Standards, particularly the stipulation of "No criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974" The Driver no longer met this standard, hence his licence could be revoked under "any other reasonable cause" (s61 Local Government Miscellaneous Provisions Act) and it was up to the Driver to satisfy the Panel that despite the conviction he remained a fit and proper person to hold a private hire driver's licence. The Assistant Chief Executive-Legal advised the Panel to consider the Driver's representations on this issue accordingly.

The Driver's legal representative then made representations regarding the Driver's co-operation with the Police, the small quantity (0.9g) of the cocaine and short duration of the Driver's possession of it, and the Driver's driving record free of complaints from the public and drink/drive convictions. He also explained that the driver was unused to large amounts of alcohol and was not a drugs user.

The Driver's legal representative then described the Driver's efforts to assist foreign visitors to the District whom he collected from Stansted Airport, and referred to the driver's two previous jobs as licensee of two public houses in the Stansted area, when the driver had run the premises well and discouraged previous bad behaviour.

The Driver's legal representative asked that in the light of the above factors the Driver be given no more severe punishment than a suspension.

The Assistant Chief Executive-Legal reminded the Panel of the decision in the case of Leeds v Hussain which was authority for the proposition that personal circumstances were of no relevance when considering the question of fitness save, in exceptional circumstances, to explain the conduct of the Driver in the commission of the offence.

The Driver gave a closing address stressing his enjoyment of his job. In answer to a question from Councillor Loughlin he explained that whilst at the police station he had asked the Police to test him for drugs but that they had

not done so. He added that he had no idea what the price of the wrap would have been.

The Assistant Chief Executive-Legal advised Members that the police would not test for drugs as the offence was one of possession, not use. A drugs test was therefore unnecessary.

Members retired to deliberate on their decision at 3.20pm.

LC15

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

Members returned to announce their decision at 4.33 pm.

The Chairman read the decision of the Committee as follows:-

Mr Haynes appears before the committee today for the committee to consider whether to revoke his licence. Mr Haynes has been licensed by this authority since September 2006. At that time and at all times before August this year he met the council's licensing standards. However on 4 August 2011 he was convicted at East Hertfordshire Magistrates Court of an offence of unlawful possession of a class A drug namely 0.9 grams of cocaine. Initially on his first appearance at court on 6 June he had pleaded not guilty to the offence but he changed his plea to one of guilty on 4 August. Mr Haynes was fined £350 and ordered to pay a victim surcharge of £15 and costs.

Mr Haynes account of the circumstances of the offence is set out in the officer's report. Briefly he was at a public house where he had consumed an unspecified amount of alcohol. He puts it at 7 – 8 pints of beer and a number of shots. He says that he met someone he knew in the toilet who gave Mr Haynes a wrap. Door staff at the premises suspected that a drugs deal may be taking place and asked both men to leave. The man who had supplied the drug did so but Mr Haynes stayed and argued with door staff with the result that the police were called. Mr Haynes admitted to the police that he was in possession of what he believed to be cocaine.

Under s.61 Local Government Miscellaneous Provisions Act 1976 licensing authorities may revoke a licence on the grounds that since it was granted the licence holder has been convicted of an offence of dishonesty, indecency, violence or an offence under the 1976 Act. It may also revoke a licence for any other reasonable cause. The committee accept that a conviction for possession of drugs does not fall within the list of offences contained within the Act as a reason for revocation.

However under the Act a council cannot grant a licence to someone unless they are satisfied that they are a fit and proper person. If the council ceases to be satisfied that a licence holder is a fit and proper person that would be a reason for revoking the licence for any other reasonable cause. In determining whether a person is fit a proper the council has a policy

which it is entitled to have. Uttlesford's policy provides that "Uttlesford District Council are responsible for ensuring the safety and well being of the fare paying public and others by administering control of hackney carriages and private hire vehicle drivers pursuant to the provisions of the Local Government (Miscellaneous Provisions) Act 1976. To achieve this objective the Council has adopted standards which it expects drivers licensed by the Council to meet, both on an application for a new licence and during the period a licence is held. Whilst each case will be dealt with on its individual merits applications for a new licence from persons who fail to meet these standards will normally be refused and existing licence holders who cease to meet these standards are likely to have their licence suspended or revoked or not renewed on application." One of the standards is "No criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974". Mr Haynes therefore no longer meets the council's standards. The onus is therefore upon him to satisfy the committee that he remains a fit and proper person to hold a private hire driver's licence.

Mr Clowser on Mr Haynes behalf made a number of submissions as to the approach he says the committee should take and in fairness to Mr Haynes the committee will address those points in turn.

The first was whether Mr Haynes made a prompt admission. Mr Clowser says that although a not guilty plea was originally entered and the matter set down for a trial notice of change of plea was given to the court and crown prosecution service well in advance of the hearing date that the plea was to be changed. As against that Mr Clowser acknowledges that Mr Haynes was not co-operative with the police and did initially enter a not guilty plea.

The second matter is the seriousness of the offence. Possession of a class A drug is always a serious matter. Whilst the drug may have come into Mr Haynes possession involuntarily he kept it in his possession believing it to be cocaine and his actions in that respect were entirely voluntary. Mr Clowser asks us to take account of the fact that the length of time the drug was in Mr Haynes possession was relatively short and that there was no evidence that he had used it. The duration of possession was dictated by the timing of his arrest. In interview by the police it seems that Mr Haynes indicated that had he not been detained he would probably have taken it home.

Mr Clowser then asked the committee to consider Mr Haynes past history. The committee are clearly aware of Mr Haynes previous suspension for breach of conditions on his licence and that on that occasion he appeared to be untruthful in his dealings with the council. Although not relevant to the decision today Mr Haynes past history concerning his drivers licence can hardly be mitigation.

Clearly Mr Haynes has been punished by the court for the offence of possession of a controlled drug. The committee's view is that further punishment by way of a suspension would be inappropriate, effectively

punishing Mr Haynes twice for the same offence. However different considerations apply to a revocation of a licence.

The committee is to have regard to any aggravating features which apply to the offence. The committee find that Mr Haynes drunkenness as well as the fact that the offence occurred on licensed premises both to be aggravating factors.

The committee must have regard to mitigating factors. The fact that the amount of drugs in Mr Haynes possession was small is in our view outweighed by the fact that class A drugs were involved. The fact that Mr Haynes is not a drugs user does not excuse the fact that he had cocaine in his possession which he retained and may have taken home out of curiosity. Although the committee was told Mr Haynes takes his job seriously this is not reflected by Mr Haynes attitude towards the conditions on his licence, and in any event the standard described by Mr Clowser is something the committee would hope all drivers would aspire to.

Finally we were asked to consider the financial impact of a suspension or revocation upon Mr Haynes. The committee accept that a revocation of his licence will result in the loss of his employment as a private hire driver. However whilst in terms of a suspension the financial impact is a relevant factor, the fact that a revocation of a licence will inevitably mean a financial hardship to the driver cannot make them a fit and proper person. The case the committee was referred to of Leeds –v- Hussain is clear authority that the personal circumstances of the driver are only relevant in exceptional circumstances to explain the drivers conduct in committing the offence.

By virtue of his conviction Mr Haynes does not meet the standard of fit and proper person as set out in the council's policy. The onus is upon Mr Haynes to satisfy the committee that notwithstanding the fact he does not meet the policy he remains a fit and proper person. Although the committee have considered carefully all the submissions made on Mr Haynes behalf it is not satisfied that there are grounds to depart from its policy. It is not satisfied that Mr Haynes remains a fit and proper person to hold a private hire driver's licence by virtue of his conviction and his licence will therefore be revoked.

The Assistant Chief Executive-Legal advised the Driver as to his rights to appeal and to drive pending resolution of any appeal.

The meeting ended at 4.44 pm