

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at  
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on  
21 DECEMBER 2011**

Present: Councillor E Hicks – Chairman.  
Councillors J Davey, D Perry and V Ranger.

Officers in attendance: M Chamberlain (Enforcement Officer), M Hardy  
(Licensing Officer), M Perry (Assistant Chief Executive-Legal),  
and P Snow (Democratic and Electoral Services Manager).

Also present: Mr B Drinkwater (representing Mr Harvey), Mr M Harvey (driver –  
item 2) and Mr J Hooker (driver – item 3),

LEH34

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

The Assistant Chief Executive-Legal clarified that both this and the final item  
were not part 2 items and would be considered in public session.

The Committee considered the report of the Licensing Officer regarding an  
application from Mr J Hooker for the grant of a Private Hire Driver's Licence.  
The Council's licensing standards stated that not more than three minor  
motoring offences should appear on a DVLA driver's licence during the three  
previous years. The first of these convictions had lapsed and on the face of it  
Mr Hooker appeared to meet the licensing standards.

However, Mr Hooker did face a disqualification for exceeding 12 points on his  
licence within a three year period. There were only limited grounds for not  
disqualifying a driver in these circumstances, none of which were relevant to  
the question of whether the driver was considered a fit and proper person to  
hold a licence.

Had Mr Hooker been disqualified for the standard period he would not have met  
the Council's licensing standards for three years after the disqualification  
expired or 12 months after the licence was reissued whichever was later. Thus  
the earliest that Mr Hooker would have met the licensing standards would have  
been July 2013.

The report referred to the interview conducted by the Licensing Officer where  
he gave an explanation for the circumstances that had led to the endorsements.

The Licensing Officer asked Mr Hooker to confirm that he had received the  
amended report issued for this meeting and he confirmed that he had.

It was noted that Mr Hooker was licensed and working as a Hackney Carriage  
Driver by Broxbourne Borough Council. He now wished to transfer from that  
area to Uttlesford to operate a new Private Hire Company with his partner in  
Great Dunmow.

Members asked various questions of the Licensing Officer and Mr Hooker  
confirmed that he had no questions.

Mr Hooker then gave his account. He said that the report was self-explanatory and that he should not have committed the offences that had led to the endorsements. He now wished to open a new company in Great Dunmow operating a 24 hour service and he believed there was a strong public demand for the service he would provide.

Members then asked Mr Hooker a number of questions about his application. In response to the first question, Mr Hooker said that three points had now been removed from his licence and that he should not have been caught doing the things that had led to the convictions.

The chairman emphasised that the Council's policy was intended to produce high standards operated by drivers complying with the law. Mr Hooker gave an assurance that the offences he had committed would not happen again. He had now obtained a hands free kit for his mobile telephone and his behaviour would be up to scratch.

Councillor Perry referred to the case for exceptional hardship he had made at Harlow Magistrates Court and asked whether Mr Hooker was still dependent upon driving to make his living. Mr Hooker confirmed that the exceptional hardship case he had made was still applicable. It would take time to build up his new business in Dunmow and he would need to be a driver himself to help the business to become established.

In response to further questions, Mr Hooker said that his partner also had a driver's licence and that he had dependent children he was required to transport by minibus.

The Assistant Chief Executive-Legal clarified a number of points regarding Mr Hooker's convictions and said that the fit and proper person test was not affected by the decision of the magistrates' court not to disqualify Mr Hooker upon exceptional hardship grounds. He said that the determination of the fit and proper person test was a matter for members to determine and could not be influenced by what the court had decided.

Mr Hooker and the licensing and enforcement officers then withdrew to enable the Committee to determine the driver's licence application. After a period of consideration they invited the driver and the officers to return to give their decision.

## **DECISION**

Mr Hooker applied to the council for a joint hackney carriage/private hire driver's licence on 1/11/11. He had not been licensed by this council previously. The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Hooker's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. So far as an applicant's driving record is concerned the relevant standards are as follows:-

1. "Not more than 3 minor motoring offences during the last 3 years. For this purpose a minor motoring offence is defined as one where 5 or less penalty points have been endorsed on the driver's licence
2. No serious motoring offences in the last 3 years. For this purpose a serious motoring offence is defined as one where 6 or more penalty points have been endorsed on the driver's licence
3. Where a driver has been disqualified from driving for any reason an application for a licence will normally not be considered for 3 years from the date that the disqualification expires or twelve months from the licence being re-issued if this period is greater"

Mr Hooker's driving licence reveals a number of motoring offences. There was a fixed penalty imposed for a traffic signal violation said to have occurred on 1 June 2008. There were 2 offences of using a mobile phone on 20 May 2009 and 18 June 2009. Each of these offences attracted 3 penalty points. On 25 January 2010 Mr Hooker was stopped for an offence of excess speed. This would have given Mr Hooker at least 12 points on his licence within a 3 year period and under the totting up provisions Mr Hooker faced an automatic 6 month disqualification. He was therefore obliged to appear before the magistrates' court. Mr Hooker was legally represented and the magistrates were persuaded to exercise their discretion not to disqualify on the basis that a disqualification would cause Mr Hooker exceptional hardship as it would deprive him of his living as a private hire driver. The magistrates imposed a fine of £167 and ordered Mr Hooker's licence to be endorsed with 4 penalty points.

At the time of his application for a licence Mr Hooker did meet the council's licensing standards as the first conviction disclosed by his licence was then more than 3 years old leaving him with 3 minor motoring offences within the last 3 years. However the object of the licensing standards is to ensure the safety of the public. Those with bad driving records would not be licensed to drive. In the normal course of events a person who gets 12 points on their licence is disqualified from driving. The reason behind the licensing standard which provides that an application would not normally be considered within 3 years of the expiration of a period of disqualification is to demonstrate that the driver has modified his approach to driving so as not to break the law.

The Committee are aware that there are circumstances in which magistrates do have a discretion not to disqualify a driver with 12 points on his licence. However none of those circumstances go to the issue as to whether the driver is a fit and proper person. That is a decision for the Licensing Committee to take in each case. In determining whether an applicant is fit and proper the Committee are aware that the courts have held that the personal circumstances of a driver are not relevant save for in exceptional circumstances to explain the conduct of a driver in the commission of an offence. Thus the very matters which give magistrates a discretion not to disqualify are matters the courts have said should not be taken into consideration by the Committee on an application for a licence.

The fact that Mr Hooker now meets the council's licensing standards does not entitle him to a licence. The committee may have regard to the fact that had the magistrates not exercised their discretion Mr Hooker would have been disqualified for 6 months from 20 April 2010, that is to say until 20 October

2010. If that had been the case Mr Hooker would not have met the Council's licensing standards until 21 October 2013.

In light of this and in the light of Mr Hooker's driving record the Committee is not satisfied that he is a fit and proper person to hold a private hire drivers licence and the application is therefore refused.

The Assistant Chief Executive-Legal advised the applicant that he had a right of appeal.

**LEH35 EXCLUSION OF PUBLIC**

RESOLVED that, under section 100I of the Local Government Act 1972, the public be excluded 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.

**LEH36 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

It was agreed to adjourn until 5 January 2012, the consideration of a report concerning the possible suspension or revocation of a Private Hire Driver's Licence in the absence of the driver concerned. The driver's licence would be suspended until that meeting but it was not necessary for the suspension to take immediate effect in the interests of public safety.

The public was readmitted to the meeting for the consideration of the remaining business.

**LEH37 DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered the report of the Licensing Officer regarding an application by Mr M Harvey for the grant of a Private Hire Driver's Licence. Mr Harvey was present and was represented by Mr B Drinkwater.

The Assistant Chief Executive Officer-Legal explained that the item would be taken as a part 1 item as the matter was in the public domain.

The Licensing Officer said that, following receipt of Mr Harvey's application, examination of the Enhanced Criminal Records Bureau Disclosure revealed a conviction which had not been spent in accordance with the Rehabilitation of Offenders Act 1974.

Whilst on holiday in Mexico in 2004, Mr Harvey had purchased and subsequently brought into the country what he had described as a zapper in a small box. In interview with the Licensing Officer, Mr Harvey had said that the item had been bought in a joke shop. The effect of firing the zapper was to emit an electrical discharge equivalent to that found in livestock fencing.

The Licensing Officer outlined the circumstances in which Mr Harvey had been arrested and then convicted of one offence of possessing a prohibited weapon contrary to Section 5 of the Firearms Act 1968.

Current licensing standards stated that an applicant shall not have any convictions not deemed spent within the meaning of the Rehabilitation of Offenders Act 1974.

Members then asked a number of questions of the Licensing Officer concerning the nature of the zapper device found in Mr Harvey's possession.

Mr Drinkwater presented his case on behalf of Mr Harvey for the grant of a licence. He referred to the report of the Licensing Officer and said that the lighter tone of the words used to describe the zapper in paragraph 4 of the report was more fitted to the circumstances of how the device had been purchased and brought into the UK. Mr Harvey said that the device had never been used.

In presenting his case, Mr Drinkwater said that the key issue was whether Mr Harvey was a fit and proper person. He believed that Mr Harvey deserved to be treated as an exception to the Council's policy. He had been open and honest with the Police and with the Licensing Officer and had dealt with the matter in a transparent and straightforward manner.

He asked Mr Harvey to agree with the Council's policy standards and Mr Harvey agreed that he did so. He then invited Mr Harvey to agree that he did not meet the standards in section 4 about criminal convictions and again Mr Harvey agreed this was the case. Mr Harvey said that he had been 25 years old at the time of his conviction. At the time of the purchase of the item concerned he had been enjoying a family holiday in Mexico. He had bought the item for approximately £15 in a joke shop as he thought it was funny and should be regarded as a toy and not as a weapon.

The box containing the device had been kept in various drawers and cupboards for about four years before he had inserted a battery and tried the zapper on himself. It had then ended up on the floor of his car after being placed in the side compartment during an office move.

He had been arrested in February 2009. This happened when his brother was arrested on a night out with friends. He had gone to the Police station with his brother and was then arrested. He was released within minutes and bailed.

Mr Harvey said that the police were friendly and had appeared amused rather than concerned by the nature of the device. He went again to the police station in April 2009. He was informed that the CPS had decided to charge him with an offence. The police had been apologetic and said that they had wanted to caution him.

In response to a question about why he supposed the CPS had decided to prosecute him, Mr Harvey replied that they had looked at a bit of paper and seen it as a no lose case.

A further question was asked of Mr Harvey about how his legal adviser had dealt with the matter. Mr Harvey replied that the matter had been handled badly. He had paid for a barrister and had told him that he hoped to walk away

with no penalty. His barrister had then told him that he would try to get him off with a fine.

Mr Harvey was then asked whether he had anything further to say to members. He replied that he had told the complete and utter truth and hoped that the Committee would be able to look beyond a bit of paper.

The Licensing Officer then asked Mr Harvey to comment on the Firearms Act which had created a number of serious offences. Mr Harvey agreed this was the case but said that had he for one moment thought the device would be classed as illegal he would not have bought it.

The Licensing Officer then asked why he thought the custody officer had viewed the matter as a potentially serious case and referred it to the CPS. Mr Harvey said that he thought that all matters were referred to the CPS.

The Chairman then invited members to ask questions of the applicant. Councillor Perry asked if the account he had given was the same as given to the court. Mr Harvey said that the account given was the same as in court.

The Assistant Chief Executive said that Mr Harvey had pleaded guilty and the fine should have been reduced by one third. He considered it a high punishment for a first offence. The burden of proof was on Mr Harvey to make a case for the Council to depart from the licensing standards.

In summing up on behalf of Mr Harvey, Mr Drinkwater agreed that the Council's duty was to licence only those applicants seen as fit and proper persons. Mr Harvey had an excellent driving record and had just one blot on his record which had resulted in one unspent conviction. This was the outcome of spending £15 on a toy at 25 years of age. The Police had been surprised the matter had not been dealt with by way of a simple caution. He felt that bad luck had led to the conviction and asked members of the Committee to treat Mr Harvey as an exception of the established policies.

The applicant and his representative and the Licensing Officer then withdrew to enable the Committee to determine the application. After a period of consideration, the applicant and his representative, and the Licensing Officer were invited to return to hear the decision.

## **Decision**

Mr Harvey applied to the council for a joint hackney carriage/private hire driver's licence on 22 November. He had not been licensed by this council before. On his application form he declared that he had a conviction on 14 May 2009 for possession of a prohibited weapon. Details of this conviction were confirmed in the CRB check carried out during the application process. As a result of this conviction Mr Harvey does not meet the council's licensing standards which provide that drivers should not have convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974. The rehabilitation period for Mr Harvey's offence is 5 years which will expire on 15 May 2014.

The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Harvey's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. Where an applicant fails to meet the council's policy the onus is upon him to show that there are grounds upon which an exception to policy should be made.

Mr Harvey has given details of the circumstances in which he acquired the offending item. He was on holiday in Mexico with the lady who is now his wife and relatives. He says that he saw the item in a mall. It was in a box with a picture on the front of an old lady zapping a burglar. He says that he bought it as a joke. In his evidence to the Committee he said that when he got home he put batteries in it and tried it. He said that the only person who had been zapped by it was himself.

When giving details of his arrest he sought to play down the seriousness of the offence by saying that the police were not overly concerned and that when he answered his police bail the officer he dealt with was surprised that the CPS wanted to charge him rather than administer a caution.

He ultimately appeared before the magistrates' court where he was represented by a barrister. He pleaded guilty and was fined £1200 and ordered to pay £87 costs. The maximum sentence the magistrates could have imposed was £5000 or 6 months imprisonment or both. Mr Harvey was critical of the quality of his legal representation. He said that his barrister asked him what outcome he wanted. Mr Harvey said that he hoped to walk away with nothing to which his barrister said he would try to get him a fine.

Despite the efforts of Mr Harvey and Mr Drinkwater on his behalf to play down the seriousness of the offence the Committee are not satisfied that it was a trivial matter. Mr Harvey had tested the weapon on himself. He was clearly aware of its potential and yet he retained it in his possession. There was no satisfactory explanation for this. The CPS (which would have had more information than was available to the Committee this afternoon) was clearly of the view that the matter was sufficiently serious to justify a prosecution in the public interest. The level of fine imposed by the magistrates for a first offence with an early plea of guilty clearly shows that the magistrates considered the offence to be a serious one and if Mr Harvey's barrister was going to try to get a fine for him the implication is that the barrister considered the offence so serious that a custodial sentence was a possibility.

The council's licensing standards are there to provide guidance as to what the Committee will look for in determining whether an applicant is a fit and proper person to hold a private hire drivers licence. The object of the standards is to ensure the safety of the public. Where an applicant wishes the Committee to make an exception to policy and grant a licence when he does not meet the licensing standards the burden is upon him to show that there are grounds for doing so.

Having decided that the offence was a serious matter and not a trivial one as portrayed by Mr Harvey the Committee find that there are no grounds for it to depart from its policy. Accordingly the Committee are not satisfied that Mr Harvey is a fit and proper person to hold a hackney carriage or private hire licence and the application is therefore refused.

The Assistant Chief Executive-Legal advised the applicant of his right of appeal.

The meeting ended at 4.35pm.