

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 14
MAY 2012**

Present: Councillor E Hicks – (Chairman).
Councillors M Lemon, J Loughlin, and D Perry.

Also present: Mr Makepeace.

Officers present: M Chamberlain (Enforcement Officer), R Dobson (Democratic Services Officer), M Perry (Assistant Chief Executive-Legal) and D Scales (Enforcement Officer).

LIC70

EXCLUSION OF THE 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.

The Chairman accepted a suggestion by the Assistant Chief Executive-Legal that all three matters on the agenda be dealt with as one item, since they arose from the same circumstances.

LIC71

DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE, PRIVATE HIRE DRIVER'S LICENCE AND PRIVATE HIRE VEHICLE LICENCE

Mr Chamberlain, the Enforcement Officer, gave a summary of the reports before the Committee. He confirmed that no application to renew the operator's licence had been received from Mr Makepeace.

The Chairman thanked the Enforcement Officer, and explained to Mr Makepeace that he would be able to ask questions either at this point or during his statement. Mr Makepeace said he would do so during his statement. Members had no questions at this point.

Mr Makepeace then presented his case. He said he had experienced continual difficulties regarding misdirection of post regarding renewal notices for the operator's licence. A year ago he had had to ask the Council for a copy of this licence, as he had never received it, although he accepted it was his responsibility to ensure he had obtained the licence.

Mr Makepeace referred to a visit to his premises by enforcement officers on 13 April, when he had been informed that the operator's licence had expired. Mr Makepeace had telephoned the Council and had been told that his licence was due to expire at the end of May. It was for this reason that he had not gone ahead with an application in time. He had therefore been shocked when the enforcement officers had told him on 13 April that the operator's licence had expired. He said he had not received a renewal notice.

Mr Makepeace spoke about the reason for using the vehicle to carry passengers when its licensing plate had been removed. Due to the timing of the enforcement officers' visit at 4pm on a Friday, he had had no opportunity to speak to his solicitor and had therefore taken advice from a struck off solicitor who had told him the business did not need a private hire licence. Mr Makepeace said he had then removed the licensing plate from the vehicle as he felt this was the only way in which he could continue to carry passengers.

Mr Makepeace then spoke about his private hire driver's licence. He referred to a meeting with the Assistant Chief Executive-Legal to discuss the matter of a failure to disclose three points on his licence. He said he had admitted this, and had received a two-day suspension. He said the incidents in November 2009 related to an occasion when he had committed two offences of speeding. He said these speeding offences arose from being caught by a mobile speed camera in Bishop's Stortford, where the speed limit had been changed from 50 to 30mph with no warning sign being displayed. He said he had driven that route more than once that day, mistakenly believing the speed limit to be 50mph, which explained why there were three offences around the same time. He had not intended to speed and had successfully appealed to the HGV licensing authority having lost his HGV licence. Mr Makepeace said regarding the convictions for these speeding offences, one was dated 8 April 2010, and the other two were dealt with on 21 April 2010. He said he had not known from the dates in the report that these dates related to those offences.

Mr Makepeace said that on 28 May the licensing officer had written to him, but he did not then know about these convictions because his driving licence had been lost. He had submitted forms to obtain a duplicate licence, which he said he would be able to produce. He said he had also written to the Council's Licensing Officer to inform him of the endorsements, but he had been told that this letter was not on the licensing department's file. He was not trying to deceive anyone. He said the dates in the report were wrong regarding two convictions in 2010.

At the invitation of the Chairman, the Enforcement Officer said he had no questions.

The Assistant Chief Executive-Legal said regarding the issue of the renewal notice, that the licensing authority was under no duty to inform the operator of the imminent date for renewal. The responsibility for being aware of the date for renewal rested with the operator. The Assistant Chief Executive-Legal said he had spoken to the Licensing Officer who had confirmed that the renewal notice had been sent to Mr Watson at his home address.

Mr Makepeace said he had spoken to Mr Watson who had stated he had not received the notice.

The Assistant Chief Executive-Legal said the address when the licence was first issued had been the one provided by Mr Makepeace when he first applied. Subsequently the addresses for a number of units on the estate had been

changed, and it was for this reason that the notice was sent to Mr Watson's home address.

Councillor Loughlin asked questions regarding the speeding convictions. She asked whether at that time Mr Makepeace was carrying paying passengers; when and exactly where the speed limit had been changed. In reply Mr Makepeace said he had not been carrying passengers as he had been travelling in his own car; that he could not remember when the limit had been changed; and that it was in Bishop's Stortford on Stansted Road, near the DIY stores. Councillor Loughlin said she thought this road had always been a 30mph road.

Regarding the issue of letters not being sent to the correct address, Mr Makepeace explained that his business premises had remained at the same site, but that the address had changed from Parsonage Farm to the M11 Business Link.

The Assistant Chief Executive-Legal said letters had been sent to Mr Watson's home address.

Mr Makepeace repeated that Mr Watson said he had not received letters. In reply to a request to confirm whether the address for the business was Unit 45 M11 Business Park, he said the address was Ardent House, M11 Business Park.

Councillor Perry asked whether Mr Makepeace agreed with the facts stated in the reports. Mr Makepeace said there were a couple of omissions, and that the reports painted a very black picture of him.

In reply to a question regarding ownership of the business, Mr Makepeace said he owned the larger percentage of the business, with Mr Watson owning the remainder.

Councillor Perry suggested that as the highest percentage owner Mr Makepeace might agree that he had responsibility for ensuring the business was run properly.

Mr Makepeace referred to the issue of communications being misdirected.

Councillor Perry said his concern related to the production of the counterfoil driving licence at a point when Mr Makepeace claimed it had been lost. He asked why over 800 miles were missing from the vehicle daily log from 13 April to 17 April, and he referred Mr Makepeace to the relevant pages of the background papers.

Mr Makepeace said he could not explain why he had been able to produce the driving licence at a time when he claimed it had been lost by the court.

Regarding the omission of mileage entries from the vehicle daily log, Mr Makepeace said immediately after the Enforcement Officers had attended his

premises, the licensing plate had been taken off the vehicle. He said the reason for this was that the vehicle was being used without the licence.

Councillor Perry asked whether Mr Makepeace was admitting that had used the vehicle without a licence and that he had falsified the daily log.

Mr Makepeace denied falsifying the daily log. Members asked further questions, as follows: whether the mileage had not been recorded because the vehicle was not being used as public hire vehicle, whether this had occurred between 13 and 17 April, whether Mr Makepeace had contacted the Court regarding his lost licence, and whether the Court could have sent it to the wrong address.

In reply to these questions, Mr Makepeace said he had telephoned the Court regarding the lost licence and he had contacted the DVLA but they had no record. The licence should have been sent to his home address, and he could not explain why he had not received it.

In reply to a question, Mr Makepeace said he had informed the Council of the change of the business address.

Councillor Lemon asked whether Mr Makepeace had reported the loss of the driving licence to the Post Office. He commented that Mr Makepeace had earlier stated that he did not agree with some of the statements in the reports, and asked him which ones he did not agree with.

Mr Makepeace said the reference to two convictions in November 2009 in the report regarding his private hire driver's licence was incorrect.

The Assistant Chief Executive-Legal said the report referred to the offences, one in September 2009 and two in November 2009, the penalty points for which had been endorsed on Mr Makepeace's licence. He said Mr Makepeace had been aware of those offences before the application to renew the licence and Mr Makepeace had notified the Licensing Officer of the other two offences after he had been notified of his suspension.

The Chairman noted that there had been a total of three offences and all had resulted in convictions.

Councillor Lemon asked Mr Makepeace whether there was anything else in the reports with which he did not agree.

Mr Makepeace replied that no mention had been made of his two telephone calls to the Council to check the licence dates. He felt the reports depicted him in a bad light and that whilst he had made mistakes the situation was not as bad as had been described.

Councillor Perry asked several questions about the operation of Ardent Parking.

In reply Mr Makepeace said the business included an area for parking for a maximum of 140 vehicles. There had been no change of venue for the business during the period in question.

Mr Makepeace then said he wished to make a statement. He said since the start of the business three years ago it had had continual problems with Uttlesford District Council. He said the Council had considered the vehicle which was used for the business to be a private hire vehicle, but he did not consider this to be the case. He said other airports took the view that a shuttle vehicle was not a private hire operator's vehicle. Conveying passengers in a shuttle from the car part to the airport differed from the way a private hire vehicle business would operate as the clients were not charged for travelling in the shuttle.

Mr Makepeace described in further detail the operation of the business, explaining his view that the shuttle vehicle was not a public service vehicle. He referred to the planning situation, which he said had been an ongoing issue, as Uttlesford's planning department had applied to evict Ardent Parking from their site. He had approached BAA to ask whether he could transfer his business to a site within the Airport from which to run a small workshop and park cars. No agreement with BAA had been forthcoming and following a review by the planning inspectorate, the business had been given two years to resolve the issue. He referred to the definition of a private hire vehicle, and to problems arising from the costs of representation at the planning inspection. He had not been able to afford legal representation today.

Mr Makepeace said he had spoken to the Planning Department but they had not taken up his request to hold any further discussion. He was aware that operating the business from its current site contravened the T3 policy, but as BAA would not allow the business on its site he considered BAA had an unfair monopoly which should be challenged. He said if today's decision went against him he would go bankrupt; and that he employed eight people who would also lose their jobs. Regarding whether he was a fit and proper person he said he did a lot of work for charity. He was a member of the Chartered Institute of Links and Transport and had taken degree-level qualifications in connection with running his business. He was a competent person; whilst he had made mistakes he had not tried to deceive anyone, and tried to act according to certain moral standards.

The Chairman said he noted that the business was Mr Makepeace's main source of income; that Mr Makepeace felt he had met with difficulties in dealing with various departments of the Council; and that he felt he did not have to apply for an operator's licence. However, the Chairman said as the business did operate within Uttlesford, various conditions were applicable. Therefore he found it difficult to understand how Mr Makepeace could have allowed such an important matter as his operator's licence to go by.

Mr Makepeace replied that he had telephoned the licensing department regarding his licence expiry date and was not lying.

The Chairman said that Mr Makepeace had said this telephone call related to his driver's licence expiry date.

The Assistant Chief Executive-Legal said that that conversation could not have related to the operator's licence, as at that time it was held by Mr Watson.

Councillor Loughlin asked whether Mr Makepeace had been aware of the Council's policy on airport related parking outside the airport before he had started his business.

Mr Makepeace said he had been aware of it but that BAA had not permitted his business to take an airport site. He denied that he was operating an illegal parking business, as the Planning Inspector had deemed it was not illegal, and had granted him until November 2013 to enable discussions to take place with his partners as to how to take the business forward. He referred to competition laws and said a concern had been expressed by the Planning Inspector regarding the issue of a parking monopoly at the airport.

Members further questioned Mr Makepeace on his assertion that Ardent Parking was not a private hire operator business and therefore did not require a private hire operator licence.

Mr Makepeace confirmed that his business operated by charging a fee for parking, which included a shuttle service to and from the Airport. He said the charge related to parking and not to the shuttle service; he was therefore not a private hire operator. Mr Makepeace said the application form supplied by the Council for the private hire operator's licence referred only to businesses where bookings were made by telephone, fax or attending the office, whereas his business bookings were made via the internet only. He referred to the fact that Ardent Parking also ran a garage service.

The Assistant Chief Executive-Legal said the case of *Benson v Boyce* was authority that provision of a vehicle in connection with a business required an operator's licence. Ardent Parking was charging clients for an aspect of the business; the reason Mr Makepeace originally applied for the operator's licence was because the Council's interpretation of policy was that this was necessary, and Mr Makepeace was here today to defend the determination of a licence he claimed he did not need.

Councillor Perry said this interpretation was supported by VOSA.

Mr Makepeace said in conclusion that he had not lied; he was just trying to run a business; he admitted he should have known the date the licence expired; and that he had telephoned the Council and had been told the expiry date was the end of May.

The Assistant Chief Executive-Legal advised the Committee that the personal circumstances of the applicant did not render them fit and proper.

The Committee withdrew at 11.15am to consider its decision, and returned at 1.25pm.

Decision

Mr Makepeace has three matters before the Committee today. The first concerns an operator's licence. Mr Makepeace held an operator's licence from this Council from 1 April 2010 until 31 March 2011 jointly with Mr Coney trading as Ardent Parking. This licence was not renewed and a new licence was granted to Mr Watson trading as Ardent Parking on 14 April 2011. That licence expired on 31 March this year and Mr Makepeace applied for the grant of a licence as Ardent Parking on 16 April. Officers have referred this application for determination by the Committee. Arising from that application certain facts have come to light which indicate that Mr Makepeace has breached a condition on his driver's licence and committed an offence by making a false statement when he applied to renew that licence in May 2011. In the light of that Members have been asked to consider whether Mr Makepeace's driver's licence should be suspended or revoked. Finally the licence in respect of a vehicle operated by Ardent Parking expired on 30 April 2012. Members are asked to deal with the application to renew that licence.

Under the Local Government (Miscellaneous Provisions) Act 1976 councils are required to grant operators licenses to person applying for them provided that they are satisfied that the applicant is a fit and proper person. The Council does not publish criteria for determining whether a person is fit and proper to hold an operator's licence. However under the Act a licence once granted can be revoked on any one of the following grounds:-

- an offence, or non-compliance with, the provisions of this Part of the Act
- any conduct on the part of the operator which appears to the district council to render him unfit to hold an operator's licence
- is not relevant to this application
- any other reasonable cause.

Mr Makepeace has not shown that he is a fit and proper person to hold an operator's licence. It is the responsibility of an operator to renew his licence when it falls due. Mr Makepeace failed to do this when the licence he held jointly with Mr Coney expired at the end of March 2011. The new licence granted in April 2011 was granted to Mr Watson alone. No application was received from anyone to renew that licence before it expired on 31 March 2012. Mr Makepeace says that the company did not receive the notification that the licence needed to be renewed maintaining that it was sent to the wrong address. He says that the business address was Unit 45 Parsonage Farm but that this has now been changed to Ardent House M11 Business Link. The Committee do not accept this explanation for two reasons. Firstly the notice that the licence was due to be renewed was sent to the home address of the licence holder, Mr Watson who is apparently a partner in the business. Secondly although Mr Makepeace acknowledges that Mr Watson is a partner he said that he (Mr Makepeace) owned by far the largest percentage of the business and was responsible for the paperwork. There is no obligation on the Council to send a renewal notice. It is the duty of all licensed operators to be aware of the date of the expiry of the licence and to ensure that application to renew is made in good time. In this respect Mr Makepeace failed twice. It seems that Mr Hardy left a message with Mr Makepeace to inform him that the licence was due for

renewal. If Mr Makepeace was genuinely unaware of this (although he ought to have been aware) he ought to have checked the operator's licence which should have been in his possession. Mr Makepeace says that instead he telephoned the licensing department when he was informed that his licence did not expire until the end of May. That clearly referred to Mr Makepeace's driver's licence as that was the only licence he held from this authority.

Had that been the only issue the Committee may have been prepared to grant the operator's licence. However on 13 April 2012 enforcement officers attended the offices of Ardent Parking and discovered that the business was continuing to provide a shuttle service to and from Stansted Airport. Mr Makepeace was informed that there was no operator's licence and that to provide this service was illegal. Mr Makepeace says that at the time of the officers' visit there was a vehicle with passengers in it waiting for a transfer and that he had to arrange for them to be transported by a taxi. What happened next is that it seems that Mr Makepeace took advice from a struck off solicitor and following that advice he removed the licence plate from the vehicle and continued with business as usual. The enforcement officers have taken copies of records of bookings from Mr Makepeace which show over 800 miles not accounted for between 13 April and 17 April. Mr Makepeace's explanation for this was that no records of journeys was kept as the plate had been removed from the vehicle. On 16 April the vehicle was stopped during a check at Stansted Airport when the offences of driving a vehicle without a plate and operating a vehicle without a licence were noted. Whether or not the licence plate was put back on the vehicle after that is not clear but there follows a record of bookings being taken on a daily basis from 17 April onwards.

Mr Makepeace has stated that he believes that he does not need a private hire operator's licence in connection with his business as he is providing a shuttle service for his customers free of charge. That is contrary to the advice given to the Committee by its legal officer. It is clear that Mr Makepeace is charging his customers for other services which include the cost of the shuttle service and he is therefore providing the shuttle service in the course of his business. As such an operator's licence is required. The Committee find it disingenuous for Mr Makepeace to try and argue that an operator's licence is not required when he has previously held such a licence and is applying to renew. Had he seriously considered that an operator's licence was not required he would not have applied for one and would have challenged the Council's position by defending any prosecution it decided to bring.

The Committee is therefore satisfied on the evidence that Mr Makepeace has committed offences under the 1976 Act of operating a private hire vehicle on a number of occasions when he was not licensed to do so and after it was drawn to his attention that this was an offence. He has also committed a further offence by causing a licensed vehicle to be used without its plate being displayed. Mr Makepeace has shown a complete disregard of the law not only in this respect but also with regard to his attitude towards planning legislation. Before the Committee Mr Makepeace acknowledged that he started a parking business within the district without planning permission which he knew was required and which he knew was unlikely to be forthcoming as it was contrary to the Council's planning policies. In the circumstances the Committee have no

confidence in Mr Makepeace being prepared to observe relevant legislative requirements when they conflict with his own business interests. The Committee are not satisfied that Mr Makepeace is a fit and proper person to hold a private hire operator's licence and his application for the grant of such a licence is therefore refused.

With regard to Mr Makepeace's driver's licence the Council does publish guidance as to what may be considered fit and proper. Mr Makepeace does meet that criteria. However the guidance is just that. There will be cases where a driver does not meet the criteria but nevertheless the Committee may be satisfied that they are a fit and proper person. There will be other cases where a driver meets the criteria on the face of it but for other reasons the Committee is not satisfied that the driver is a fit and proper person.

One of the factors the Committee has regard to in these circumstances is observance of conditions and the legislation. It is a condition attached to drivers' licenses that they must notify the Council in writing of any convictions within 7 days. Mr Makepeace was first licensed as a driver by the Council on 2 June 2009 at which stage he had 3 points on his licence in respect of an excess speed matter. In September 2009 he was caught for speeding by a police safety camera. The Committee do not know whether or not Mr Makepeace was offered a fixed penalty notice for this offence but in any event he decided to plead not guilty and the matter was therefore deferred for a trial. In November 2009 Mr Makepeace was caught speeding on two other occasions. Again he elected to plead not guilty and following usual procedures these matters would have been set down for trial.

The offence committed on 20 September was dealt with by the Magistrates' Court on 8 April 2010. Mr Makepeace was found guilty and fined £100 and his licence was endorsed with 3 points. Both of the November offences were tried at the same time, on 21 April 2010. Mr Makepeace was found guilty of both offences. In respect of one offence he was fined £115 and had his licence endorsed with 3 penalty points, in respect of the other he was fined £235 and endorsed with 4 points.

Mr Makepeace applied to renew his driver's licence on 5 May 2010. He completed an application form which had a question on it "Have you in the last year been convicted of any offence (including motoring offences), been issued with a fixed penalty notice or is there any prosecution pending against you. If YES please give particulars, otherwise write none". Mr Makepeace answered "YES" and on the reverse of the form wrote "3 points for SP30 have come off my licence. 3 points for SP30 have gone on my licence". He produced a counterpart licence in support of the application to renew which disclosed only the conviction on 8 April 2010. This was drawn to the attention of the Assistant Chief Executive – Legal who interviewed Mr Makepeace with regard to the breach of condition and suspended his driver's licence for two days. Mr Makepeace did not mention the two convictions on 21 April either on his application to renew or during his interview with the Assistant Chief Executive. Mr Makepeace says that he did not notify the Council sooner because the points had not been endorsed on his licence and he was unaware of them. He says that his counterpart licence had been lost by the court when he handed it

in on conviction on 8 April. He further says that he wrote to Mr Hardy on 28 May 2010. A copy of that letter is in the Committee's background papers. In this letter Mr Makepeace says "Following a conviction on 8 April 2010 for speeding I was instructed by the courts to hand in my driving licence allowing for points to be added and my licence updated accordingly. As discussed with you recently the licence was never returned and whilst I was in negotiations with the DVLA over the loss of my licence I was caught again for speeding. Because my licence could not be traced it was not possible for the points for this offence to be added to my licence as I did not have it. I was instructed by the DVLA to reapply for a new licence of which I have done, I have enclosed copies of the Notice of Endorsement for your records."

This letter was clearly untrue for two reasons. In the first instance Mr Makepeace must have received his counterpart licence back from the court with the endorsement on it relating to the conviction on 8 April 2010 as he produced it to the Council when applying to renew the licence on 5 May 2010. When this was put to Mr Makepeace in questions he had no explanation for this. Secondly Mr Makepeace said that he was caught again for speeding whilst in negotiations with the DVLA over the loss of his licence. Leaving aside for the moment that the licence had not been lost the offences for which Mr Makepeace had been caught were in November 2009, not when he was applying for a new licence in May 2010.

On the application for renewal of his driver's licence Mr Makepeace signed a statement confirming that there had been no other changes to his details. This was clearly untrue and therefore Mr Makepeace has committed an offence under the 1976 Act of making a false statement to obtain a licence. Although the failure to notify the conviction on 8 April 2010 was dealt with by the Assistant Chief Executive the failure to notify the two convictions on 21 April were not.

Under the Act a council can suspend or revoke a driver's licence for any reasonable cause. On a fresh application for a driver's licence the Council must grant the licence subject to certain minimum criteria (which Mr Makepeace satisfies) but must not grant a licence unless it is satisfied that the applicant is a fit and proper person. It follows that if the Council cease to be satisfied that a licensed driver is a fit and proper person that is a reasonable cause for revoking the licence. Mr Makepeace has committed offences under the Act in both his capacity as an operator and a driver. The Committee are not confident that if his licence were to be allowed to continue he would be prepared to observe the law in future and is not satisfied that Mr Makepeace is a fit and proper person. Mr Makepeace has submitted that the loss of his licenses will cause him great financial hardship. That may well be the case but that fact does not make fit and proper someone who is not. The Committee have been advised that the personal circumstances of the licence holder are not relevant factors in determining whether someone is a fit and proper person. The Committee have therefore decided that Mr Makepeace's driver's licence will be revoked.

With regard to the application to renew the vehicle licence in the light of the Committee's decisions there is no-one authorised to operate or drive the vehicle. In the circumstances the Committee refuse to renew the vehicle

licence. However that refusal is without prejudice of the right of a licensed operator or driver controlled by a licensed operator to apply for a vehicle licence in the future.

The Assistant Chief Executive-Legal explained to Mr Makepeace that he had a right of appeal against all three decisions; that regarding the driver's licence and vehicle licence these could continue to be used until the end of the appeal period; that this was not the case with the operating licence as none was in existence.

The meeting ended at 2.10pm.