

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 3
JULY 2012**

Present: Councillor D Perry – (Chairman).
Councillors J Davey, M Lemon, and J Salmon.

Also present:

Mr B Drinkwater (Chairman ULODA), Mr A Jackson (the Driver), and
Mr J Ashman (Carriages, the Operator).

Officers present: M Perry (Assistant Chief Executive-Legal), R Dobson
(Democratic Services Officer) and M Hardy (Licensing Officer).

LIC4

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the report of the Licensing Officer. The Assistant Chief Executive-Legal advised that whilst the report asked Members to consider revocation of a private hire driver's licence in accordance with Section 61 (1) (b) of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act'), it was under section 61 (1) (a) that the matter must be considered, on the grounds that the driver had been convicted of an offence involving violence.

The Licensing Officer took Members through details of when Mr Jackson had first been granted a private hire driver's licence, his attendance before Feltham Magistrates' Court charged with an offence of assault to which he pleaded not guilty; and the fact that he had been convicted of the offence and given a conditional discharge for six months, with an order to pay costs of £300. As a result of this conviction Mr Jackson no longer met the Council's licensing standards.

The Chairman invited Mr Drinkwater to put questions regarding the Licensing Officer's report. Mr Drinkwater asked the Licensing Officer whether he was able to confirm that Mr Jackson had worked for his employer, Carriages, since April 2007.

The Licensing Officer said the Council's records did not record this fact.

In reply to a question, the Licensing Officer confirmed that Mr Jackson had since the issue of his driver's licence complied with its conditions.

Mr Drinkwater asked the Licensing Officer to confirm his understanding of the circumstances of the incident leading to his conviction, in particular his account of the verbal exchange between Mr Jackson and the other driver. Mr Drinkwater invited the Licensing Officer to agree that this incident could be termed a 'verbal altercation', which the Licensing Officer accepted.

Regarding a reference to the distance between the parties, Mr Drinkwater asked whether it would be correct to add that Mr Jackson had been walking towards the Airport Terminal because the altercation was over. The Licensing Officer agreed that he understood this to have been the case.

Mr Drinkwater asked further questions, in reply to which the Licensing Officer said there could be various reasons for the time taken by the police to contact Mr Jackson, and confirmed Mr Jackson had complied with the conditions of his licence following the incident.

There being no questions from Members, the Chairman invited Mr Drinkwater to address the Committee.

Mr Drinkwater said he would try to convince the Committee that Mr Jackson continued to be a fit and proper person to be a licensed private hire driver. He drew attention to the reference in the report stating that whilst it was legitimate for councils to have policies, they were not rigidly bound by them and must be prepared to make exceptions in appropriate circumstances. He then addressed questions to Mr Jackson, regarding his understanding of the conditions of his licence and the public safety reasons for such conditions.

Mr Jackson said he fully appreciated the reasons for the conditions of his licence, and that he had advised the Council promptly of his conviction and had voluntarily attended the police interview. He had worked for Carriages since 2007, having applied to work for them in January 2007 part time, on an 'as and when needed' basis until he had been made redundant from his full time job in 2010. He had then been accepted as a full time driver for Carriages, and had held a licence from September 2010 until now.

Mr Drinkwater invited Mr Ashdon, a colleague of Mr Jackson from Carriages, to read out three character references: one dated 14 May 2012 from Jan Pegram, Managing Director of Carriages, who was on holiday and therefore not able to be at today's hearing; one dated 1 July 2012 from Ellen Strahlman, Senior Vice President for the office of the CEO of GlaxoSmithKline; and one dated 12 September 2007 from Mr J E Wotherspoon. All three documents referred to Mr Jackson in very positive terms. Mr Ashdon provided additional background details about the circumstances of the references, and circulated copies of the documents to Members.

Mr Drinkwater asked Mr Jackson to speak about his reaction to the Court's decision. Mr Jackson said he had been shocked and that he had felt his solicitor had through inexperience let him down regarding a number of points which he felt could have been made. With regard to the witness who had given evidence against him, Mr Jackson questioned his independence, referred to differences between his account and that of the driver; and said he had wondered if there had been collusion between them.

Mr Drinkwater asked Mr Jackson whether his version of the incident was that Mr Jackson had not hit the driver, to which Mr Jackson agreed. He said he had at the time been holding his Carriages name board in one hand and his mobile in the other and the altercation was purely verbal. He disputed the witness' claim regarding his view of the incident as it was fairly dark in the car park and the witness was 15 yards away. He said he had advised his passengers about the incident out of consideration for them. Mr Jackson went on to make a number of points about the impression he had gained that the police had found it difficult to come up with a charge against him; the delay in the prosecution;

and his surprise that all parties had departed from the scene when he had returned to his vehicle with his passengers.

The Chairman thanked Mr Drinkwater, Mr Ashdon and Mr Jackson for their statements and for the provision of character references for Mr Jackson. He asked whether it was correct that Mr Jackson had not been licensed by this Council until 2010. Mr Jackson confirmed that this was the case. The Chairman asked why Mr Jackson had been driving since 2007 for his employer. Mr Ashdon said Mr Jackson had worked for the business on an occasional basis in a 'small time capacity'. In reply to further questions from the Chairman, Mr Jackson said his attendance at the police station had been under caution, that the allegations of the independent witness had been put during the interview; that the witness had been present at court and that the opportunity to cross examine him had been given.

The Chairman asked further questions about the proximity of Mr Jackson to the driver of the other vehicle, and the circumstances in which the other driver's car had collided with the vehicle behind it. Mr Jackson said it was obvious to him that the other driver's car was an automatic from its moving backwards when the driver started getting out. He said that the closest he had been to the driver was perhaps 5 yards or as close as the Licensing Officer was currently sitting to the Chairman.

Councillor Lemon asked further questions about the distance between the driver and Mr Jackson when the driver's car began to move. Mr Jackson said he was not close enough to see into the car but that he was walking towards the terminal when the driver was getting out of his car, and that it was at that point the car began to move.

In reply to the question why he had not appealed the conviction, Mr Jackson said he could not afford to do so.

The Assistant Chief Executive-Legal said Members should have regard to section 61 (1) (a) of the Act, as Mr Jackson had been convicted of an offence involving violence. The certificate of conviction had not been made available to the Committee, but Mr Jackson had informed the Committee that his conviction was for assault. Mr Jackson had denied the offence had occurred, but had appeared before the Magistrates' Court where he had been represented and had been convicted of the offence. The Committee could not look behind the fact of a conviction. It was open to defendants to represent themselves on appeal, if they were unable to afford representation, and an appeal would be a complete re-hearing not simply a review.

The Assistant Chief Executive-Legal said that if Members found that Mr Jackson was no longer a fit and proper person to hold a driver's licence that their only course was revocation.

Mr Drinkwater further addressed the Committee. He referred to Mr Jackson's unblemished record since April 2007, his character references, and the fact that his employer would, like ULODA, be disappointed if Mr Jackson were not to be found to be confirmed a fit and proper person. He asked that the Committee

make an exception to policy. He said this was a one-off incident, involving a verbal altercation, and that Mr Jackson had complied with all requirements under his licence. He referred to the length of time the matter had taken to be brought to court, and suggested that a proportionate response would be the removal of Mr Jackson's suspension to enable him to return to work.

Members then withdrew at 11am to consider their decision.

At 11.45am the Committee returned to give its decision. Mr Drinkwater provided the Committee with a copy of the fine notice. The Committee noted that the certificate stated the offence was common assault, on which it had based its decision.

DECISION

The Chairman read out the Committee's decision as follows:

"Mr Jackson was first licensed by this council as a hackney carriage/private hire driver on 9 September 2010. His current licence is due to expire on 31 August 2012.

On 15 June Mr Jackson appeared before Feltham Magistrates on a charge of common assault. He pleaded not guilty and was legally represented. Following a trial he was convicted of the offence and conditionally discharged for 6 months. He was also ordered to pay £300 costs. Mr Jackson reported this conviction to the council within 7 days in accordance with the conditions of his licence. As a result of the conviction Mr Jackson does not meet the licensing standards which state that a driver should not have any convictions which are not deemed to have been spent under the Rehabilitation of Offenders Act and not to have received a conditional discharge within the last 5 years. Mr Jackson currently fails to meet both of these criteria.

When the conviction was reported to the Assistant Chief Executive – Legal he suspended Mr Jackson's licence with immediate effect in the interests of public safety. Mr Jackson now appears before the Committee for it to determine whether to revoke or further suspend the licence or to take no further action.

Mr Jackson has consistently maintained that the offence for which he was convicted did not take place. The Committee have been advised that as a matter of law it cannot look behind the conviction. The Committee therefore proceeds as it must on the basis that Mr Jackson did commit an offence of common assault. That is an offence involving violence which gives rise to a ground to suspend or revoke the licence under s.61(1)(a) of the Local Government (Miscellaneous Provisions) Act 1972.

When a new application is made for a licence the Council must grant the licence provided certain statutory criteria are met but must not grant a licence unless it is satisfied that the driver is a fit and proper person. The burden of proof is on the driver to establish on the balance of probabilities that he meets this test. The Committee have been advised that if notwithstanding the conviction it is satisfied that Mr Jackson remains a fit and proper person it

would be appropriate to take no action in which case the suspension would expire at noon today.

It has been advanced on Mr Jackson's behalf that this was a one-off incident. Whilst acknowledging that Mr Jackson is of previous good character he did on this occasion react wholly inappropriately when faced with a confrontational situation. The Committee cannot have any confidence that if placed in similar circumstances he would not react in the same way again. For that reason the Committee is not satisfied that Mr Jackson remains a fit and proper person and would revoke the licence under s.61(1)(a).

In addition to that situation however it came to light today that Mr Jackson had been doing private hire work on a part time basis between 2007 and 2010 without being licensed as a driver. The explanation given for this was that the work was not regular but was on an "as and when" basis. The Committee regard that explanation as extraordinary. Driving as a private hire driver without a licence is an offence under the Act. Whilst the Committee understands that due to the limitation period a prosecution for that offence is now statute barred the Committee take a serious view of the fact that Mr Jackson was apparently prepared to flaunt the law for so long. In the view of the Committee someone who is prepared to break the law over a prolonged period cannot be considered to be a fit and proper person.

The Committee therefore revoke the licence under s.61(1)(a) for having been convicted of an offence involving violence and also under s.61(1)(b) for any other reasonable cause, namely that it is not satisfied that Mr Jackson is a fit and proper person by virtue of his having committed offences of driving a private hire vehicle without a licence over a prolonged period of time.

The circumstances leading to the revocation under s.61(1)(a) are those which caused the Assistant Chief Executive – Legal to exercise his delegated authority to suspend the licence with immediate effect in the interests of public safety. He was of the view that a driver who behaves violently towards a member of the public when provoked does pose a threat to public safety. The Committee agree and consider that it is necessary in the interests of public safety for the revocation to have immediate effect. The revocation is therefore effective now and the Committee understands that in the circumstances Mr Jackson may not drive pending any appeal."

The Assistant Chief Executive-Legal informed Mr Jackson he would write to him setting out his right to appeal, and that he could not drive whilst that appeal period was pending nor while any appeal was being considered by the courts.

The meeting ended at 11.50am.