

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 18
APRIL 2012**

Present: Councillor E Hicks – (Chairman).
Councillors H Asker, J Davey, J Freeman, J Loughlin, M Lemon,
D Morson, D Perry, V Ranger, J Salmon and A Walters.

Also present: Councillor R Chambers – Portfolio Holder for Finance
Mr B Drinkwater, Uttlesford Licensed Operators and Drivers
Association.

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

LIC59

PUBLIC QUESTION AND ANSWER SESSION

Mr Drinkwater made a statement, a summary of which is set out below:

My statement this evening contains mixed messages. The good news is substantially as set out in my written statement circulated to Members, summarised as follows.

Regarding the licensing reserve and annual budget Members, officers and trade representatives work well together to review the year end surplus, and we look forward to receiving the results when they are available.

Regarding the Quality Taxi Partnership, the new CCTV scheme has continued to work well, and the first case involving the use of admissible recorded evidence was reported at the liaison meeting in March. There is a growing list of operators and owners wishing to have CCTV fitted in their vehicles, and dialogue between members and officers continues regarding securing matched funding for this purpose.

Regarding the annual review of the table of fares, the trade's working party has started this year's review. The consultation closes at the end of April, and we will present our findings at the first meeting of the Committee in the new financial year.

Finally, I would like to register my strong feelings of concern that increasingly the trade is not being listened to. This concern is based on the approach of the licensing liaison group to certain issues which I had raised on behalf of the trade, and which have not been reflected in the minutes of those meetings. The issues I raised and which were not recorded were the following:

- a request made at the liaison meeting in March that Uttlesford District Council's conditions of licence should go forward;

- a report from an operator regarding notice issued to him in respect of picking up at Stansted Airport, which he eventually succeeded in getting the Crown Prosecution Service to drop, which in the minutes was only briefly referred to as a 'discussion';
- the fact that I had said that the national association had a different interpretation of the law to the Assistant Chief Executive-Legal regarding driver ID.

I would therefore like to register my concern that these are just a number of examples of inaccuracy of reporting meetings of this group, which I consider could be a matter for the Scrutiny Committee.

Councillor Morson commented on the concerns raised by Mr Drinkwater. He said it was surely one of the functions of this Committee to consider issues that arose in trade meetings. It was necessary to establish a mechanism to address concerns from the trade.

The Committee noted that the meeting to which Mr Drinkwater had referred was not serviced by the Council's democratic services section, but by the licensing team. The Chairman said that issues regarding preparation of minutes in relation to those meetings could not be a matter for this Committee to determine, and it was for those attending the meetings to raise any concerns about accuracy of minute-taking.

Councillor Loughlin commented that this Committee had previously decided that Members should attend meetings between the trade representatives and officers from the enforcement team. In her view it was important that the minutes of the group meetings should be correct.

The Chairman replied Members could choose to go to such meetings, but were not appointed by the Council to do so.

Councillor Walters suggested that in order to ensure the minute-taker was fully aware of a speaker's wish to have a particular point be recorded that an explicit request should be expressed when that point was raised.

Councillor Morson reminded Members that at a recent meeting Councillor Perry had suggested Members should have some role in setting the agenda for the meetings, and that this could be a route by which issues of trade discontent could be dealt with.

The Chairman welcomed this approach. With proper notice, trade representatives could ask any member of this Committee to put forward items to be considered on the agenda. He said the Committee benefitted from the briefings given by the Chairman of ULODA and this was an opportunity for Members to address sources of discord.

Mr Drinkwater said he was happy with this approach.

Councillor Loughlin asked a question about the remit of the Committee in terms of policy setting, and questioned the difference between the Licensing and Planning Committees.

The Assistant Chief Executive-Legal said regarding the minutes of the liaison group, that minutes were not verbatim but were intended to be a summary of the discussion. ULODA were welcome to provide a minute-taker. He commented further that at the meeting in question various issues were aired, one of which was outside the control of the Council; and that the Members present at that meeting showed no appetite for changing the terms and conditions of the licence. However any such modification would need to be dealt with by Cabinet. Although policy was set by Cabinet, it would be sensible for the Portfolio Holder to consult the Committee.

Councillor Lemon said it was for the officer/trade liaison group to sort out its own minutes, and he suggested the discussion should move on.

The Chairman asked that if there were any items requiring discussion by the Committee that these should be put forward either to him or to another Committee Member as an agenda item for the next meeting.

LIC60 **DECLARATIONS OF INTEREST**

Councillor Chambers declared a personal interest as a Member of Essex County Council and Essex Fire Authority.

LIC61 **MINUTES OF MEETING HELD ON 18 JANUARY 2012**

The minutes of the meeting held on 18 January 2012 were signed as a correct record.

MATTERS ARISING

(i) Minute LIC46 – agenda items for the Committee

Councillor Perry reported on the outcome of a meeting which had taken place following a resolution by the Committee regarding setting its agenda. It was agreed that agenda items should be submitted to the Chairman and Democratic Services. There would also be the opportunity at the discretion of the Chairman to defer an issue so that a working group could consider it and revert to the meeting.

MINUTES OF MEETING HELD ON 27 JANUARY 2012

The minutes of the meeting held on 27 January 2012 were signed as a correct record.

MATTERS ARISING

The Assistant Chief Executive-Legal said no appeal had been submitted.

LIC62

POLICE REFORM AND SOCIAL RESPONSIBILITY ACT 2011

The Committee considered a report by the Assistant Chief Executive-Legal on amendments to the Licensing Act 2003 set out in the Police Reform and Social Responsibility Act 2011, and which were anticipated to be the subject of a statutory instrument giving effect to such amendments by 25 April 2012. The statutory instrument had not yet been laid.

The Assistant Chief Executive-Legal asked the Committee to consider two issues: the delegation of functions of the local authority as a responsible authority; and whether the Committee wished to carry out a review of the Council's Licensing Policy Statement. Regarding the latter, an explanatory note would be placed on the Council's website, but the Committee also had the option to establish a task group to review the licensing policy statement.

Councillor Loughlin asked about the implications for workload regarding the new requirements for notifying Environmental Health in terms of TENs. The Assistant Chief Executive-Legal explained that the onus was now on the police and Environmental Health to make objections based on the four licensing objectives. The number of such representations received each year was in the hundreds., If such an objection were received to a standard 10 a hearing would be required, If an objection were received to a late TEN no hearing would take place and the event could not go ahead.

Councillor Perry commented on the fact that many provisions of the Act did not come in until later in the year, including the late night levy which might have implications for public order. He was concerned that the provisions included reference to gambling, an area in which the Council's enforcement team did not have experience. The Assistant Chief Executive-Legal confirmed that the delegated authority he was suggesting related only to the Licensing Act 2003.

RESOLVED

- 1 to establish a Licensing Task Group, the terms of reference of which would be to advise the Licensing and Environmental Health Committee on a review of the Council's licensing policy statement and to submit a final report to the Committee meeting of 24 October and an interim report to the meeting of 11 July; and to appoint Councillors Lemon, Loughlin and Perry as members.
- 2 to delegate the functions of the licensing authority as a responsible authority to the team leader of the enforcement team.

LC63

EXERCISE OF DELEGATED POWERS

The Committee considered a report informing members of the exercise of powers delegated to the Assistant Chief Executive-Legal. The report gave a

summary of eight matters about which interviews with drivers had taken place regarding potential breaches of conditions attached to their licences.

None of the drivers who had been suspended following such interviews had appealed.

The Assistant Chief Executive-Legal said he was concerned at the possibility that drivers and licensed operators were working together to avoid the effects of suspension by changing drivers' shifts. He said he had notified the trade of members' concern that two day suspensions were not proving to be a suitable deterrent and that three days would in the future be the starting point. He would deal with each case on its merits, but if a third breach of condition were to occur the matter would be referred to the Committee.

LIC64 **OTHER BUSINESS**

Councillor Chambers said this was his last meeting as Cabinet member for licensing, as responsibility for licensing would move from the Portfolio for Finance to the new Portfolio for Highways, Councillor Walters.

Councillor Morson offered congratulations on behalf of the Committee to Councillor Hicks on his forthcoming election to Vice Chairman of the Council.

Members who were not staying at the meeting to hear the determination of two drivers' licences under urgent items then left. Councillors Hicks, Lemon and Ranger remained to form the panel for this business.

LIC65 **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.

LIC66 **MINUTES OF THE MEETING HELD ON 12 MARCH 2012**

The minutes of the meeting held on 12 March 2012 were considered and signed as a correct record.

LIC67 **URGENT BUSINESS - DETERMINATION OF PRIVATE HIRE VEHICLE DRIVER'S LICENCE**

The Committee received two reports under urgent items for the reason that this meeting was the earliest opportunity at which these applications could be dealt with, and it was not appropriate to delay them further.

The Chairman welcomed the first applicant, introduced Committee Members and explained the composition of the Committee.

The Committee considered the report of the Licensing Officer, which was presented in Mr Hardy's absence by the Enforcement Officer.

The report related to an application for the grant of a private hire driver's licence. Whilst the application form did not disclose any criminal convictions, an enhanced criminal records bureau disclosure indicated previous criminal convictions. The report set out the details of these convictions, and of the explanation offered by the driver during an interview with the Licensing Officer.

Following the presentation of the report, the Chairman invited the applicant to comment.

The applicant said he had not read the application form at the time he had signed it and that the taxi hire operator's staff had completed the form on his behalf. Whilst he did not normally sign forms without reading them first, he had done so because it had been given to him by the operations manager, who had not asked him to check that the details were correct. He had not referred to his previous convictions because he was unaware of the question on the form. In reply to a question from the Chairman, he confirmed he had had no intention to deceive anyone by omitting reference to the previous convictions, and that he knew that a criminal records bureau check would be made.

In reply to a question, the applicant said the operator had not asked him about having his own CRB check.

The Committee withdrew at 8.30pm and at 8.35pm returned to give its decision.

Decision

The Chairman said that the Committee had decided that the applicant was a fit and proper person to hold a driver's licence and that the application would be approved and the licence granted.

LIC68

URGENT BUSINESS – DETERMINATION OF PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the second applicant and introduced Members of the Committee.

The Committee considered the report of the Licensing Officer, which was presented by the Enforcement Officer in Mr Hardy's absence. The report set out details of an application for the grant of a joint hackney carriage/private hire driver's licence. The applicant had indicated on her application form that she had not been convicted of any offences, which included spent and unspent convictions. However, the enhanced criminal records bureau check had disclosed previous criminal convictions.

The Enforcement Officer said that a further letter dated 16 April 2012 had that morning been received from the applicant, which she wished to submit as further representations. The Committee agreed to this request.

Following presentation of the report and further representations, there were no questions from Members. The Chairman invited the applicant to explain to the Committee the reason for making a misstatement on her application form.

The applicant said she had filled in the form as she did based on advice she had received from the police and NACRO, a charity for the reduction of crime and resettlement of offenders, both of which had advised her she could answer 'no' to the question on the form regarding whether she had previous convictions. She said that the employee of the taxi hire operator had filled in the form based on a clear CRB check, but that when the further check was carried out the previous convictions had been disclosed. If the applicant had thought these spend convictions needed to be mentioned on the form, she would have filled it in differently. She said this part of her life was one which she regretted and ad put behind her.

The Committee withdrew at 8.45pm and returned at 8.50pm to give its decision.

Decision

The Chairman said that the Committee were of the opinion that the applicant was a fit and proper person and that the application was approved and the licence would be granted.

The meeting ended at 8.55pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 24
APRIL 2012**

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

Also present: :Mr S Sparrow, Police Licensing Officer
Sgt M Ashton, Essex Police
Mr S Clark – Licence Holder of Zafferano.
Mr J Clark – representing Mr S Clark.

Officers in attendance: M Cox (Democratic Services Officer), M Hardy
(Licensing Officer) and M Perry (Assistant Chief Executive-Legal).

LIC69

DETERMINATION OF AN APPLICATION FOR A OF A PREMISES LICENCE

The Chairman welcomed everyone to the meeting.

The Licensing Officer presented a report setting out an application for a review of a premises licence in respect of Zafferano Restaurant, Saffron Walden made by the Chief Constable of Essex. The review was being sought on the grounds that related to the licensing objective that deals with the prevention of crime and disorder.

The Licensing Officer took Members through the report which set out the objectives of the Licensing Act 2003, the granting of a premises licence to the store on 9 November 2005, the subsequent application to vary the license and the licensable activities that were currently permitted. Since 2005 the premises had changed hands on two occasions and since Mr Clark took over the nature of the premises had changed from a restaurant to a late night venue mainly catering for party events.

The report set out a series of events that had occurred in or in the vicinity of the premises, which had been reported to the Police from October 2010 to January 2012. The last recorded incident had involved a large scale public disorder at the premises which had resulted in an arrest and a conviction of assaulting a police officer and using threatening behaviour likely to cause a breach of the peace. It was on the basis of this incident that the review was being sought.

In the intervening period discussions had taken place between the Police and Mr Clark where advice had been given on the running and supervision of the premises. There had been no further incidents attributed to the premises.

The application for the review had sought to vary the license and include the following conditions

1. The licensable activities from Sunday to Thursday cease at 12 midnight and for a Friday and Saturday they finish at 1am.

2. A minimum of 2 registered door staff be employed on duty when the licensable activities go beyond 12midnight. The premises to operate a register that includes the name and badge number of the operative on duty to include the time when on duty together with their signature. The register to be made available to a Police Constable or authorised officer upon a reasonable request.
3. A personal licence holder shall be on duty throughout the whole time when a licensable activity is taking place.
4. There shall be no entry to the premises by any customer after 11.30pm.
5. A CCTV system to be provided which is capable of providing pictures of an evidential quality in all lighting conditions particularly identifying facial recognition.
6. CCTV cameras shall encompass all ingress and egress to the premises which include fire exits and all areas where the sale of alcohol takes place.
7. CCTV equipment and recordings must be maintained in good working order, be correctly timed and date stamped. Each recording must be numbered in sequence and kept for a period of 31days and handed to the Police or authorised officer upon demand.
8. The Premises Licence Holder must ensure that at all times the DPS or appointed member of staff is capable and competent in the downloading any of the CCTV footage in a recordable format either disc or VHS to the local Police or authorised officer.
9. The recording equipment tapes and discs shall be kept in a secure environment under the control of the DPS or other named responsible person.
10. An operational daily report log must be maintained, endorsed by signature, indicating the CCTV system has been checked and is compliant. In the event of any failings any action taken is to be recorded.
11. In the event of a technical failure of the CCTV equipment the Premises Licence Holder/DPS must report the failure to Essex Police on contact number 0300 333 4444 immediately.
12. A Challenge 25 policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
13. A zero drugs policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
14. The premises shall be members of the local Pub Watch Scheme and the Behave or be Banned (BOBB) scheme.

The Committee was advised that when determining the application it should have regard to the relevant sections of the Council's Licensing Policy and guidance issued by the Secretary of State. If it wished to impose conditions it could only include those that were necessary and proportionate to the licensing objective of the prevention of crime and disorder.

The Chairman invited Mr Sparrow to speak

Mr Sparrow drew took the Committee through the chronology of events relating to the premises. He concentrated on the incident on 29 January 2012 which had led to this review.

Mr Sparrow asked Sergeant Ashton, who was duty sergeant on that evening, to give more details of the events on 29 January. He said that at 12.10am that evening he had a call about a large disturbance outside of Zafferano's. He found around 30 people outside the venue who were hostile and aggressive, drinking and pushing and shoving. There had been damage to a window. Personally he had come into contact with one man, who was hostile and abusive and tried to elbow him in the face making contact. He had been arrested and was subsequently charged and pleaded guilty to assaulting a Policeman. He said that this had been the worst public order situation in Saffron Walden for many years. There were only four Policemen on duty and they had been in fear of their safety, to such an extent that one policeman had extended his baton, ready to use.

Since this event various letters had been exchanged with the license holder, the Police had sought various conditions which had been devised in consultation with senior police officers and were seen as necessary and proportionate to the licensing objective. These had now been agreed by Mr Clark except for condition 1, which limited the opening hours of the venue.

He said he had met with Mr Clark a number of time after the various incidents and he had always been cooperative however the schedule of incidents showed a worsening of events over a period of time,

The Chairman thanked Mr Sparrow for his presentation..

Councillor Loughlin asked about the ages of those attending the event and whether all those outside had been drinking at the premises. Mr Sparrow replied that those present were predominantly older people and he suspected that most had come from the event.

Councillor Perry queried the situation at the nearby public house. Mr Sparrow said that when the Police arrived people were already out on the street and engaged in the brawl. The original fight had originated in Zafferano's. Councillor Perry asked whether all the incidents shown on annexe 2 could be attributed to Zafferano's. Mr Sparrow said that the accounts given were as accurate as possible.

Councillor Loughlin questioned the inclusion of theft and the spiking of drinks in the schedule of events as these could not necessarily be controlled by the licensee. Mr Sparrow replied that these activities served to give a picture of the activities occurring at the venue. He reiterated that on 29th January the Police had been subject to an extreme level of abuse.

The Chairman then invited Mr Sam Clark to speak. He was represented by his father Mr John Clark.

John Clark questioned a number of the events that had been included in annex 2. He did not feel that they could necessarily be attributed to Zafferano's. The female referred to in the item 3 of the schedule had been refused entry at Zafferano's and this had been substantiated in a witness statement. In terms of the criminal damage, he failed to see how it could be if be known that the individuals were drinking at the premises if no details were given. The incident with the spiked drink had not been substantiated or referred back to Zafferanos. Also the suspect calls referred to appeared to have no foundation. The incident on the 29th of January was incredibly regrettable. The booking was for a 60 birthday party where trouble would not necessarily be expected. It was dealt with in the best way possible, Sam Clark had kept people inside the venue and had called the police and assisted where possible.

John Clark then read a statement in support of his son giving details his life and business in the in the town and organising and contributing to charitable events, and referred to a number of character references . Since he had take over Zafferano's he had taken his responsibility very seriously and extended opening in the evening in response to the economic climate.

In relation to the suggested conditions, he though it was unreasonable to impose a condition to restrict the opening hours. The violence on the 29th had taken place at 11.45pm, restricting opening to 1pm would not have prevented this. The review should be solely to achieve the repetition of serious disorder.

Mr Sparrow answered the queries made by Mr Clark in relation the schedule of events and confirmed that they had all been reported incedents..

Sam Clark explained the circumstances around the spiked drink incidence, which had led to a false allegation. He also explained that he had now introduced a policy whereby no one would be admitted or readmitted to the venue after 11.30pm. He had also now installed the CCTV that had been requested by the Police.

He was asked by Mr Sparrow whether he often traded beyond 1pm. Sam Clark agreed that it was rarely necessary for him to do so, but he would like this to remain his choice. He genuinely wanted to run the venue correctly and didn't want his reputation to be affected.

Councillor Perry asked Sam Clark how many people had been excluded from the premises since it had opened, and how he dealt with known trouble makers?

He replied that he probably excluded about 1 person every other week. As for the party on the 29th he did know the reputation of two of the members on the guest list but as they had been invited guests at a 60th birthday party he had made the judgement that it was acceptable to let them in.

Councillor Loughlin asked if he knew that it was against the law to sell alcohol to people who were already intoxicated. Sam Clark replied that he did but it was a grey area as a judgement call as to when this should be applied. However he

had stopped selling certain drinks like shots that tended to lead to more rapid intoxication. In answer to a question from Councillor Salmon he said that during the evenings, as well as himself, he employed two bar staff and two door staff one on the door and one walking around the venue.

At 3.50pm the Committee withdrew to consider its decision, and returned at 4.50pm.

Decision

The committee have today considered an application by the Chief Constable of Essex for a review of the premises licence in respect of Zafferano Restaurant, 9 Market Hill, Saffron Walden. The review is being sought on grounds that relate to the licensing objective that deals with the prevention of crime and disorder.

On 9th November 2005 a licence was issued in respect of these premises following an application to convert the existing Justices On Licence under the Licensing Act 2003. On 15th November 2005 an application was made to vary the licence which now permits the following licensable activities-

- (a) Performance of live music indoors only Monday – Saturday from 8pm to 1am and on a Sunday 8pm to 12 midnight
- (b) Playing of recorded music indoors only Monday to Sunday from 9am to 2am
- (c) The sale by retail of alcohol for consumption both on and off the premises Monday to Sunday from 9am to 2am

The current premises licence holder and the designated premises supervisor is Sam Clark who took over on 31 March 2010.

Since Mr Clark took over the running of these premises the nature of the business has changed from a restaurant to what can be described as a late night venue. Bookings are taken for what can be described as party type events. Also since the licence was transferred there have been a number of incidents requiring police intervention.

At 00.18 am on 3rd October 2010 Essex Police received a report of criminal damage and assault which were linked to these premises.

At 1.40am on 24th October 2010 Essex Police received a report of a disturbance at the premises resulting in a female being arrested for Public Order Offence. However Mr Clark has given evidence that the female concerned had not been drinking in his premises. She had arrived at his premises drunk and refused entry as had happened at other licensed premises she tried to enter a short time earlier.

At 2.25am on 14th August 2011 Essex Police received a report of public disorder at these premises and an identical report at 2.14am on 21st August 2011. Both of these reports were anonymous and on neither occasion did the

police find any evidence of disorder occurring. Mr Clark says that he was not aware of any disorder on either occasion.

In October 2011 Essex Police received a report from a female of the theft of a camera, mobile telephone, £250 in cash and a bank card which took place at the premises on the night of 8th October 2011 when customers were asked to leave the premises following a fight at that location.

At 12.05am on 29th January 2012 Essex Police received a report of a large scale public disorder involving approximately 25 to 30 persons at the premises which resulted in a 48 year old male being arrested who was under the influence of alcohol. That person was later found guilty at Court of assaulting a Police Officer and using threatening words and behaviour likely to cause a breach of the peace.

In the intervening periods Essex Police have met with Mr Clark on 3 separate occasions giving advice regarding the supervision and management on the running of these premises which promotes the licensing objective that relates to the prevention of crime and disorder. The last meeting between Mr Clark and Essex Police was on 30th January 2012. There have been no complaints of other incidents since that meeting.

Essex Police ask that the premises licence be varied to include the following conditions to promote the licensing objective of the prevention of crime and disorder:-

- 1 The licensable activities from Sunday to Thursday cease at 12midnight and for a Friday and Saturday they finish at 1am.
- 2 A minimum of 2 registered door staff be employed on duty when the licensable activities go beyond 12midnight. The premises to operate a register that includes the name and badge number of the operative on duty to include the time when on duty together with their signature. The register to be made available to a Police Constable or authorised officer upon a reasonable request.
- 3 A personal licence holder shall be on duty throughout the whole time when a licensable activity is taking place.
- 4 There shall be no entry to the premises by any customer after 11.30pm.
- 5 A CCTV system to be provided which is capable of providing pictures of an evidential quality in all lighting conditions particularly identifying facial recognition.
- 6 CCTV cameras shall encompass all ingress and egress to the premises which include fire exits and all areas where the sale of alcohol takes place.
- 7 CCTV equipment and recordings must be maintained in good working order, be correctly timed and date stamped. Each recording must be numbered in sequence and kept for a period of 31days and handed to the Police or authorised officer upon demand.
- 8 The Premises Licence Holder must ensure that at all times the DPS or appointed member of staff is capable and competent in the downloading

- any of the CCTV footage in a recordable format either disc or VHS to the local Police or authorised officer.
- 9 The recording equipment tapes and discs shall be kept in a secure environment under the control of the DPS or other named responsible person.
- 10 An operational daily report log must be maintained, endorsed by signature, indicating the CCTV system has been checked and is compliant. In the event of any failings any action taken is to be recorded.
- 11 In the event of a technical failure of the CCTV equipment the Premises Licence Holder/DPS must report the failure to Essex Police on contact number 0300 333 4444 immediately.
- 12 A Challenge 25 policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- 13 A zero drugs policy will be in operation at all times and suitable posters will be displayed in the public areas of the premises.
- 14 The premises shall be members of the local Pub Watch Scheme and the Behave or be Banned (BOBB) scheme.

Mr Clark agrees to all of these with the exception of condition 1 which would vary the hours of the licence.

In considering applications for reviews the Committee must have regard to the Council's licensing policy, and to the guidance issued by the Secretary of State.

The relevant sections of the Council's licensing policy and government guidance are set out in the licensing officer's report and the Committee have had regard to them

The Committee acknowledges that the amendments to the Licensing Act contained in the Police Reform and Social Responsibility Act 2011 are not yet in force and that the only conditions that can therefore be imposed are those that are necessary and proportionate to promote the licensing objective relative to the representations received.

Mr Clark points out through his father who represented him that the function which caused the disturbance in January was a 60th birthday party when trouble would not normally be expected. The incident occurred at the latest at 12.05 am. The police application for the review is expressed to be "solely to prevent a repetition of the serious disorder which occurred on [the] premises on 29/1/12 at 00.05". The Committee do not see how requiring licensing activities to cease at 1.00 am would achieve that objective. The Committee is not satisfied on the evidence before it that restricting the licensing hours is necessary for the promotion of the licensing objective of the prevention of crime and disorder. If the premises were to become a focus of crime and disorder on any future application for a review the Committee would need to consider whether a reduction in hours would be sufficient to deal with the problem or whether more drastic action such as the removal of the DPS or even a revocation of the licence may be necessary. However for today the Committee will vary the licence to impose the conditions agreed as set out in paragraphs 2 – 14 above.

The meeting ended at 5.00pm.

**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.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7pm on 28
JUNE 2012**

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

Also present:

Mr B Drinkwater, Chairman ULODA and the Operator (in relation to agenda item 2); the Driver (in relation to agenda item 4).

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

The Chairman suggested that the Committee deal with the matters listed on the agenda in the order of item 3 first, then item 4 and finally item 2.

LIC1 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 paragraphs 1 and 3 of part 1 of Schedule 12A of the Act.

LIC2 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE

The Committee considered the report of the Enforcement Officer, which had been circulated to the Operator and her representative prior to the meeting. The Enforcement Officer took Members through the report, which set out the circumstances of the incident to which the determination of the operator's licence related, in that the Operator had accepted two bookings in July and August 2011, which had been carried out by a driver who was a private hire driver licensed by Transport For London, not licensed by this authority. The report referred to the legal requirement that where a private hire vehicle is provided the vehicle and the driver must both be licensed by the same authority as the operator. The report invited Members to determine whether the licence should be suspended or revoked.

Mr Drinkwater asked for confirmation that a further option open to the Committee was to take no action. The Assistant Chief Executive-Legal confirmed that this was the case.

Mr Drinkwater asked for details of the legal authority for the requirement that a private hire vehicle, driver and operator must be licensed by the same licensing authority. The Assistant Chief Executive-Legal said it was clear from both statutory interpretation and case law such as Birmingham v Dittah that all three licences must be issued by the same licensing authority. He said the Operator must have accepted this to be the case as she had accepted the caution

Mr Drinkwater asked further questions in particular with reference to the two bookings referred to in the report.

The Enforcement Officer replied that it had been his understanding from the interview with the Operator that she had not intended to drive the customer herself but to accept the booking on behalf of her company. He said he had understood the term 'given away the booking' to mean that the booking was subcontracted.

Regarding the reference in the report to the attendance at the Council's offices by the Operator when she was formally cautioned for the offence of operating a private hire vehicle not being driven by a licensed driver, Mr Drinkwater asked the Enforcement Officer whether he accepted the addition of the words 'not licensed by this authority'. The Enforcement Officer agreed that this was accepted.

In reply to a question from the Chairman, the Operator confirmed she had received the agenda papers before the meeting.

Mr Drinkwater then addressed the Committee on behalf of the Operator. He said the Operator was a fit and proper person to hold an operators' licence, and had done so since April 2010. Her licences had twice been renewed as a matter of course.

The Operator explained that due to having taken over from the business' previous owner she had re-branded the company. It was this change of details which had led to her not receiving a briefing note from the licensing authority. The briefing note had included information for operators about the requirement that where a private hire vehicle was provided the vehicle and the driver must both be licensed by the same authority as the operator. The Operator said she had had no idea that subcontracting to her preferred drivers was not permitted if they were not licensed by this authority. She had previously asked a member of the licensing team if subcontracting was permitted, and had been informed that she could do so if she gained no financial interest.

The Operator explained the circumstances of the booking stating that she had let a driver licensed by Transport for London take the job, and that he had kept all the payment. She said that now she was fully aware of the conditions relating to her operator's licence she believed she was fully compliant, that she was still a fit and proper person to run her business and that she had intended no wrong.

In reply to a question from the Chairman the Operator said she accepted that she was guilty of the offence of operating a private hire motor vehicle not being driven by a driver licensed by this authority.

Councillor Salmon asked whether the Operator had on previous occasions given away bookings to drivers not licensed by this authority. The Operator said she had not.

Mr Drinkwater then summed up on behalf of the Operator. He asked the Committee to exercise their judgment in favour of finding that the Operator

continued to be a fit and proper person to continue holding an operator's licence.

At 7.30pm the Committee withdrew to consider the matter. At 7.35pm the Committee returned to give its decision.

DECISION

The Committee was satisfied that the Operator remained a fit and proper person to hold an operator's licence.

LIC2

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered a report by the Enforcement Officer regarding failure by the Driver to notify the licensing authority of two fixed penalty notices he had received on 9 October 2011 and 19 April 2012. The Driver had earlier today emailed details of the notices to the Council.

There being no questions from Members or from the Driver on the report, the Chairman invited the Driver to make a statement. The Driver said he admitted he was entirely at fault in failing to report to the licensing authority the two fixed penalty notices. In reply to questions, the Driver said he had not been carrying passengers at the time of the incident when he had been found to be speeding, nor when he had been driving whilst using a mobile telephone. In reply to questions about the operator for whom he worked, the Driver said he would not in future be driving for that operator, and he confirmed that his income did not depend on doing so.

The Committee withdrew at 7.40pm to consider its decision.

The Committee returned at 7.55pm and the Chairman read out the Committee's decision as follows.

DECISION

"The Driver has been licensed by this council as a private hire and hackney carriage driver since 5 October 2011.

On 15 May 2012 Essex Police noticed a vehicle formerly licensed to Ardent Parking being driven with three passengers on board. They followed the vehicle and stopped it in the vicinity of the premises of Ardent Parking. The Driver was driving the vehicle and identified himself to the police officers by producing a fixed penalty notice which gave his details.

As a result of the police stop the Council learned of the fixed penalty notice which had been issued to the Driver.

The Driver belatedly wrote to the Council by email today to inform the Council of two fixed penalty notices he has received since the grant of his licence. The first of these was on 9 October 2011 – only four days after his licence was

granted. This was for an offence of excess speed. The second was on 19 April this year for an offence of using a mobile phone whilst driving. Under the terms of his licence he should have notified the Council in writing of the issue of the fixed penalty notices within 7 days. In breach of that condition no such notification was given before today.

On 5 September 2011 the Driver was stopped by the police whilst driving a licensed private hire vehicle without holding a driver's licence. As it appeared at that time that he was acting in ignorance at the behest of his employer and he made an immediate application for driver's licence he avoided prosecution on that occasion.

Under the Local Government (Miscellaneous Provisions) Act 1976 the Council has power to suspend or revoke or to refuse to renew a driver's licence on the grounds that since the grant of the licence the driver has been convicted of a specified offence or for any other reasonable cause.

In this case the Driver has breached a condition of his licence twice by failing to notify the Council of a fixed penalty notice within 7 days. The Driver admitted that he had read the conditions on his driver's licence but stated that he could not recall any of them. That situation is not acceptable to the Committee. The Committee expects all drivers to be aware of the conditions on their licence and to observe them at all times.

By his conduct the Driver has shown a complete disregard to the conditions on his licence. It is clear that the warning given by the enforcement team previously has not had a deterrent effect. In the circumstances the Committee take a view that a suspension of the licence is necessary to act as a deterrent both to the Driver and to others in the trade. The Committee therefore suspends the Driver's licence for any other reasonable cause namely the breach of condition on the licence. Given the previous offence of driving without a driver's licence and the fact that a suspension will not have an appreciable impact upon his income the Committee consider a suspension of two months to be an appropriate and proportionate sanction.

The Assistant Chief Executive-Legal informed the Driver of his right to appeal and that he had a right to continue driving pending the expiry of the appeal period of 21 days.

The Driver indicated he would not appeal against the suspension.

LIC3

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee considered the report of Mrs Scales, Enforcement Officer. The Driver was not present, but had received the papers for the meeting which had been handed to him.

The Committee having had the opportunity to read the papers in detail prior to the meeting, Members withdrew at 8pm to consider their decision. At 8.05pm the Chairman gave the Committee's decision as follows.

DECISION

The Driver has been licensed by this Council as a private hire and hackney carriage driver since 15 July 2010. He has worked throughout for a firm called Ardent Parking. This firm parks vehicles for persons using Stansted Airport and provides them with transport to and from the terminal. Although no fares are charged for this service it forms part of the business and the costs of transfer therefore form part of the charge for parking. This constitutes the operation of private hire vehicles under the Local Government (Miscellaneous Provisions) Act 1976 which requires the use of a licensed vehicle for the purpose of fulfilling the contract. It is a requirement of the Act that no licensed vehicle may be used as such unless the licence plate issued by the licensing authority is displayed. Using a licensed vehicle without displaying the plate and using an unlicensed vehicle are both offences under the Act. It is a further offence under the Act for a licensed driver to drive a private hire vehicle if he is not wearing his driver's badge issued by the licensing authority.

Ardent Parking's operator's licence expired on 31 March 2012. No application had been made by that time to renew it. When this was drawn to the attention of Ardent Parking instead of ceasing operations as it should it carried on business but removed the licence plate from its licensed vehicle, a VX LT 35 registration number X113 MGN. On 16 April 2012 the Driver was driving that vehicle with passengers on board when he was stopped at a random road check being carried out by Essex Police in conjunction with Uttlesford District Council enforcement officers. It was noted that the licence plate was not being displayed and the Driver was not at that time in possession of his driver's badge. He was cautioned for offences under the 1976 Act.

On 30 April 2012 the vehicle licence for the VW X113 MGN expired. Although an application for renewal had been made to the Council, the Assistant Chief Executive – Legal declined to renew it under delegated powers as at that time there was no operator licensed to operate the vehicle. He therefore referred the application to this Committee which ultimately refused the application to renew.

On 2 May 2012 Uttlesford District Council enforcement officers were again carrying out spot checks with Essex Police. The Driver was stopped driving the VW X113 MGN. When questioned he admitted that he had just dropped some passengers off at Stansted Airport. Again the Driver was not wearing his driver's badge. On this occasion he was also seen to be smoking in the vehicle which is an offence as the vehicle is deemed to be a workplace.

On 23 May 2012 and again on 24 May 2012 the Driver was stopped during spot checks driving an unlicensed Ford Tourneo registration number SG54 BVM. On both occasions he had passengers on board on behalf of Ardent Parking and on neither occasion was he wearing his driver's badge. On the last occasion the Driver informed an enforcement officer that he was between addresses and

asked that the Council should contact him at his workplace. It is a condition of a driver's licence that any change of address must be notified to the Council in writing within 7 days. On checking the records it was discovered that in breach of this condition no notification of change of address had been given.

The Driver was issued with a fixed penalty notice in respect of the offence of smoking in a workplace and was invited to attend the Council offices to be interviewed under caution for other offences. The Driver failed to pay the fixed penalty notice within the permitted time and failed to attend an interview under caution. The Committee understands that the Driver is now being prosecuted for a number of offences under the 1976 Act.

In the course of preparing for the prosecutions the enforcement team made a standard enquiry of Essex Police to ascertain whether the Driver had any previous convictions. Apart from a conviction for failing to stop and report an accident (of which the Council were aware and which I will refer to further later) Essex Police informed the Council that on 10 May 2012 the Driver was formally cautioned for an offence of possession of cannabis. It is a condition of a driver's licence that any police cautions must be notified to the Council in writing within 7 days. On checking the records it was discovered that in breach of this condition no notification of the caution had been given.

With regard to the Driver's offence of failing to stop and report an accident which I referred to earlier, the Driver should have notified the Council of this offence in writing within 7 days. He did not do so. He was invited to meet the Assistant Chief Executive – Legal on two occasions with a view to the Assistant Chief Executive exercising delegated powers to suspend the licence for a short period. The Driver failed to attend either appointment without giving any reason for doing so. The matter was therefore referred to this Committee who found that there were aggravating factors surrounding the breach of condition and suspended the Driver's licence for 28 days, a significantly longer suspension than is normally issued but one which the Committee were satisfied was appropriate and proportionate in that case. The Driver did not appeal.

Under the Local Government (Miscellaneous Provisions) Act 1976 the Council has power to suspend or revoke or to refuse to renew a driver's licence on the grounds that since the grant of the licence the driver has been convicted of an offence under the Act or for any other reasonable cause. The Committee acknowledge that although the Driver faces prosecutions he has not yet been convicted of any offence under the Act. However the Committee has been advised that a conviction is not necessary for it to take action for any other reasonable cause. The Act imposes a duty on local authorities not to licence a driver unless they are satisfied that the driver is a fit and proper person. It follows that if a local authority ceases to be satisfied that a driver is a fit and proper person that would be a reasonable cause to take action with regard to the licence.

The Committee has been further advised that in considering whether a driver is a fit and proper person to hold a licence it may take into account all relevant circumstances including evidence that offences may have been committed. It is

not necessary as a matter of law to await the outcome of any prosecution before taking action.

In this case in the space of less than two months the Driver has committed one offence of using a vehicle which was not displaying its licence plate, two offences of driving an unlicensed vehicle, four offences of driving a private hire vehicle without wearing his badge and one offence of smoking in a workplace. In addition he had breached two conditions on his licence by failing to notify the Council in writing of a change of address and the imposition of a caution within 7 days.

By his conduct the Driver has shown a complete disregard for the law and the conditions on his licence. It is clear that the 28 day suspension given by the Committee previously has not had a deterrent effect. The burden of proof is upon the driver to satisfy the Committee that he is a fit and proper person to hold a licence and if there is doubt the Committee should find against the driver. The Driver has demonstrated to the Committee that he is not a fit and proper person to hold a licence and the decision of the Committee is that his licence should be revoked.

It is understood by the Committee that the Driver's licence is due to expire on 30 June and that no application has as yet been made for its renewal. The Committee give the Assistant Chief Executive – Legal delegated authority to refuse any such application for renewal of the licence by the Driver on the basis that the Council is not satisfied that he is a fit and proper person for the reasons given in this decision.

The Committee expresses its concern that as the Driver has exhibited a determination to ignore the law relating to private hire drivers that he may continue to act as such without a licence. The Committee trusts that the enforcement team will be vigilant in ensuring that any future breaches of the legislation are detected and that prosecutions result to ensure that the Driver is ultimately deterred by the fines he will receive from breaking the law in future.

The meeting ended at 8.05pm.