

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30 pm on
29 OCTOBER 2012**

Present: Councillor D Perry -Chairman.
Councillors J Davey, V Ranger, J Salmon and A Walters.

Also present: Mr Burgon – the driver
Mr B Drinkwater, Chairman ULODA (representing the driver).

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

LIC

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Chairman welcomed the driver to the meeting, and introduced members of the Committee and officers.

The Licensing Officer took the Committee through a report regarding an application for a private hire/hackney carriage driver's licence. He explained that Mr Burgon's license had been revoked by this authority on 19th April 2011 because he had not met the Council's licensing standards, having more than 3 minor motoring convictions within 3 years. Mr Burgon had appealed against the decision but this had been dismissed.

On 29th March 2011 Mr Burgon appeared before Colchester Magistrates Court for an offence of excess speed, at a level that would probably not have been dealt with by a fixed penalty. A fixed penalty could not have been imposed in any event as this would have taken Mr Burgon to 12 points within a 3 year period, which would attract automatic disqualification for at least 6 months, except in exceptional circumstances. The Court took into account evidence that he would suffer exceptional hardship and decided not to disqualify him. If he had been disqualified the earliest he would have met the council's licensing standards would be September 2014.

Since the revocation of his licence, the first and second convictions had now elapsed and Mr Burgon currently met the council's licensing standards. However in determining whether he was a fit and proper person, members were entitled to take into account the totality of his driving record and officers had referred the matter to the Committee for decision rather than exercise delegated powers.

The Chairman invited the Applicant to comment on the report. Mr Drinkwater said that the report used too many suppositions when it should deal with the facts. He then asked if it was appropriate to bring this matter to the Licensing Committee as this committee had initially revoked the license. The Assistant Chief Executive – Legal explained that it was his decision to refer the application to the committee as he considered it more appropriate for the Committee to make the decision.

The Chairman invited the Mr Burgon and his representative to address the committee

Mr Drinkwater put a number of questions which were answered by Mr Burgon.

He explained the nature of the motoring offences that they were all minor offences, two for holding a mobile phone and two for excessive speed on a dual carriageway. In relation to the appeal at Harlow Magistrates it had been found that the Council had a right to a policy. He did not appeal this decision, not wishing to prejudice future dealings with the Council.

Mr Drinkwater said that when Mr Burgon attended the Colchester Magistrates Court he had been confirmed as safe to continue to drive. Mr Burgon explained the extent of the financial loss from the revocation of his license, a reduction in 30/40% net revenue. He had operated an executive chauffeuring service, where he was the main driver so had lost this personal custom and although he had recently set up a courier service, he wished to return to his previous enterprise.

He confirmed that the safety of his passengers was paramount. For the 20 years previous to the offences he had clean license, the timing of the 4 offences so close together was unlucky. He said that his license now showed 6 points and as he now met the licensing standards had made an application to have his license reinstated.

Councillor Ranger asked Mr Burgon about his attitude to the offences. He had referred to 2 cases when he had been 'holding a phone' when in fact he had been texting which was a criminal offence. He also claimed to have been doing minimum excessive speed which would be 10% +2mph when in fact 52mph and 58mph was considerably more than this. Mr Burgon replied that by the words minimum he meant that he had received the lowest fine of 3 points, and he did not intend to play down the offences.

The Assistant Chief Executive – Legal raised the following legal issues
The Magistrate Court would not have said that Mr Burgon was fit to drive as this was outside its remit. Nor could it take account of his previous record. It only had discretion to consider the case for exceptional hardship.

Although the driver met the licensing standards the committee should still consider whether he was a fit and proper person to hold a license. It could take into account the driving history, the totality and timescale and also consider the circumstances, if the Magistrate had not exercised his discretion. The personal circumstances of the driver were not relevant to the fit and proper test. If the Committee did not consider the driver to be a fit and proper person the application should be refused. The burden of proof was on the driver, on the balance of probability.

In summing up, Mr Drinkwater said that Mr Burgon had an unblemished record except for the short period of time when the offences had occurred. It

was the totality of the driving record that was important. He now met the Licensing Standards having 6 points and asked committee to grant the license to enable him to restore his earnings.

The Driver and the Licensing Officer left the meeting at 3.05pm returning at 3.25pm when the Committee gave its decision, as follows.

DECISION

Mr Burgon applied to the council for a joint hackney carriage/private hire driver's licence on 12 October 2012. He had previously been licensed by this council between 1 February 2008 and 19 April 2011 when his licence was revoked. The reason for the revocation was that Mr Burgon ceased to meet the council's licensing standards having had more than 3 minor motoring offences within 3 years.

The legislation provides that subject to an applicant meeting certain criteria (which are met in Mr Burgon's case) a local authority shall grant a licence but that it shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. In deciding whether applicants are fit and proper local authorities are entitled to have policies and Uttlesford has such a policy in the form of its licensing standards. So far as an applicant's driving record is concerned the relevant standards are as follows:-

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

Mr Burgon's driving licence reveals a number of motoring offences which led to the revocation of his licence. These are detailed in the officer's report to the Committee on 19 April 2011 which was before Members this afternoon. The offences gave Mr Burgon 12 points on his licence within a 3 year period and under the totting up provisions Mr Burgon faced an automatic 6 month disqualification. He was therefore obliged to appear before the magistrates' court. The magistrates were persuaded to exercise their discretion not to disqualify on the basis that a disqualification would cause Mr Burgon exceptional hardship as it would deprive him of his living as a private hire driver.

At the time of his current application for a licence Mr Burgon did meet the council's licensing standards as the first 2 convictions disclosed by his licence were more than 3 years old leaving him with 2 minor motoring offences within the last 3 years. However the object of the licensing standards is to ensure

the safety of the public. Those with bad driving records would not be licensed to drive. In the normal course of events a person who gets 12 points on their licence is disqualified from driving. The reason behind the licensing standard which provides that an application would not normally be considered within 3 years of the expiration of a period of disqualification is to demonstrate that the driver has modified his approach to driving so as not to break the law.

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

The fact that Mr Burgon now meets the council's licensing standards does not entitle him to a licence. The committee may have regard to the fact that had the magistrates **not** exercised their discretion Mr Burgon would have been disqualified for 6 months from 29 March 2011, that is to say until 29 September 2011. If that had been the case Mr Burgon would not have met the Council's licensing standards until 29 September 2014.

With regard to the offences themselves, the Committee is concerned that Mr Burgon has tried to trivialise these this afternoon. There were 2 offences of using a mobile phone whilst driving and 2 of excess speed. In respect of both of the mobile phone offences Mr Burgon's mitigation at the meeting on 19 April 2011 was that he had not been making calls but had been reading text messages, something the Committee regards as being more serious as in reading texts Mr Burgon could not have been paying full attention to the road. Both speeding offences took place in breach of temporary speed limits in road works. Mr Burgon submitted that these were minimum instances of excess speed but in the view of the Committee this was not the case. The last offence involved a speed almost 50% greater than the prevailing speed limit. Mr Burgon also expressed a view that he regarded himself as being "unlucky" that the offences should have fallen within a short space of time and that had the offences been committed over a longer period he would not have had his licence revoked. Such an attitude does not suggest a driver who acknowledges the seriousness of the offences he has committed and suggests that he may well be prepared to try his luck again in the future. The Committee note from the minutes of the meeting on 19 April that the offences all occurred within a relatively short period of time when Mr Burgon was a professional driver who ought therefore to have had regard to his licence. The last of the 4 offences was committed despite the fact that when Mr Burgon renewed his licence shortly before that offence he was advised by the licensing officer that a further endorsement could put his licence at risk.

The Council has a duty to licence drivers upon application but must not licence a driver unless it is satisfied that he is a fit and proper person to hold a licence. Although Mr Burgon currently meets the Council's licensing standards in light of the fact that had Mr Burgon been disqualified he would not have met the Council's licensing standards, in the light of Mr Burgon's driving record and in the light of Mr Burgon's attitude to his motoring convictions today the Committee is not satisfied that he is a fit and proper person to hold a private hire drivers licence. For those reasons the application is refused.

The meeting ended at 3.45pm