

**EXTRAORINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 25 FEBRUARY 2013**

Present: Councillor D Perry - Chairman.
Councillors J Freeman, M Lemon and J Loughlin.

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

LIC37 DECLARATIONS OF INTEREST

There were no declarations of interest.

LIC38 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 2 part 1 of Schedule 12A of the Act.

LIC39 DETERMINATION OF A DRIVER'S LICENCE

The Chairman welcomed all those present. On being informed that the first driver on the agenda had not arrived, and that the second driver was present, that his determination of licence would be dealt with first.

The Chairman invited the Licensing Officer to present his report.

The Licensing Officer said the driver had applied for a combined private hire and hackney carriage driver's licence. Contrary to the information the driver had given in the application, the enhanced disclosure under the Disclosure and Barring Service had revealed the driver had two convictions. These convictions were for store breaking and stealing, and for assault occasioning actual bodily harm; the convictions had become spent on 11 March 1970 and on 23 January 1978, respectively. The Assistant Chief Executive-Legal had referred the matter to the Committee, rather than deal with it under delegated powers, in light of the false statement which had been made, which under section 57(3) of the Local Government (Miscellaneous Provisions) Act 1976 was an offence. The driver met the Council's licensing standards and if granted his licence would be offered employment by 24 x 7 on a school contract.

The Chairman invited the driver to question the Licensing Officer. The driver said he had no questions. He said he had been aware there would be an enhanced disclosure, but he had not thought his spent convictions would be included on it as they had taken place such a long time ago.

The Chairman asked the Licensing Officer whether the driver had been given an opportunity to respond to the information revealed in the enhanced disclosure. The Licensing Officer said that the driver had not been interviewed since the disclosure but had been contacted by telephone by the Licensing Department.

The driver made a statement. He said a standard disclosure had not included the convictions and that he had thought that the convictions were spent for the purposes of this application. He had had no intention to deceive. He was retired and that his decision to apply for a hackney carriage/private hire vehicle driver's licence was for vocational rather than career reasons.

In reply to questions about the completion of question 12 on the application form relating to the disclosure of spent or unspent convictions, the driver agreed he had stated 'no' in response and that he had understood the meaning of the statement under which his signature appeared regarding the consequences of making a false statement.

Regarding the convictions, the driver said the first offence had been committed when he was 14 years old. He said the second had taken place when he was 18. This was an altercation between youths, in which he had been one against three. The injury caused to the victim was the result of his having cut his leg when falling back against a car. The matter had been dealt with in the Magistrates Court, and he had pleaded guilty to the assault and not guilty to criminal damage. He had received a fine.

In reply to further questions the driver said he had not realised he should have included these convictions under the question on the application form, and the omission was not intentional. He confirmed he had completed the form at the offices of his prospective employer, to whom he had given the form for it to be sent to the Council. He said his previous employment was as a project management consultant, that he had been a company director and had had responsibility for managing significant construction projects.

At 10.15am the Committee withdrew to consider the matter. The Committee returned at 10.20am and the Chairman gave the decision as follows.

Decision

The Committee would expect that as you have during your career held positions of responsibility you should have been aware of the requirement to read the driver's licence application form carefully. The wording of the questions and statements on that form is clear, but if you did not understand any part of it, it was your responsibility to seek clarification. You have been at risk of prosecution and refusal to grant your licence. However, due to the passage of time since your convictions, the Committee considers it should grant your licence, but advises you to read the application form carefully in the future.

The Chairman agreed to consider the first driver listed on the agenda next. The driver was not in attendance. The Licensing Officer presented a report detailing the fact that the application for a driver's licence had not, contrary to the information disclosed in the enhanced disclosure, shown the existence of a conviction. The driver met the Council's licensing standards as the conviction was now spent, but in view of the false statement which had been made to apply for the licence, the Assistant Chief Executive-Legal had referred the matter for determination by the Committee rather than deal with it under his delegated powers. The Assistant Chief Executive-Legal said the Committee could take into account the fact that the driver was not attending the meeting today and had provided no explanation for his non-attendance, nor had he contacted the Council. Officers produced to the Committee the letter sent to the driver advising him of the date time and location of this meeting. The Chairman said he would like to have an explanation from the driver as to the circumstances of his failure to declare the existence of a conviction on his application form.

Decision

The Committee note the driver has not attended today to give an account of the circumstances, nor otherwise attempted to provide an explanation, regarding his failure to declare the existence of a conviction on his application for a private hire/hackney carriage driver's licence. The Committee is not satisfied the driver is a fit and proper person and the licence application is refused.

LIC41

DETERMINATION OF A DRIVER'S LICENCE

The Committee then dealt with the fourth driver.

The Chairman welcomed the driver and his wife.

The Assistant Chief Executive-Legal presented the facts as set out in the report. The driver had applied for a combined hackney carriage/private hire driver's licence and on his application form had notified the Council of an offence of assault said to have been committed in August 2008. The CRB check had confirmed that on 10 September 2008 the driver had been convicted of an offence of battery. The driver had been sentenced to a community order for 24 months supervision with a requirement to participate in a domestic abuse programme, and to pay costs of £87.

The conviction was not yet spent, as a consequence of which the driver did not meet the Council's licensing standards. The driver had at interview given an account of the circumstances of the incident giving rise to the conviction. He had explained he had been drinking at home, and the incident in which he had shoved his wife had been seen by a neighbour who had telephoned the police.

Following conviction, the driver had at the time informed his then employer and had kept his job, although subsequently he was made redundant along with 350 other staff. Since then, the driver had stopped drinking, had attended the integrated domestic abuse course and he and his wife had put the incident behind them and were still together.

The driver said he had no questions. He then made a statement.

The driver thanked the Committee for the opportunity to speak. He said he had worked for 27 years in the security business in various positions of responsibility and trust. He said he considered himself to be a trustworthy person, and was not proud of the one glitch in his record. He had tackled his drinking which he had identified as the real problem.

Members asked various questions about the levels of stress the driver had experienced in his work, and about the circumstances of the incident leading to the conviction. The driver agreed that he had suffered stress, and said the neighbour who had reported the incident had been passing the living room of his house at close quarters when she had seen the incident.

Members asked whether the driver's wife had made a complaint to the police. The driver's wife said she had made a statement in her home, not at the police station. She had not wished to press charges but the matter was out of her hands as the police had a policy of prosecuting any incident of domestic abuse.

Members had no further questions and withdrew to determine the licence at 10.30am.

At 10.35am Members returned to give their decision.

Decision

The Committee takes into account the fact that you are accompanied today by your wife and accepts that you have put behind you a one-off incident of domestic abuse. This incident occurred in August 2008, and due to the passage of time and the fact that you are here supported by your wife, the Committee considers your licence should be granted.

LIC42

DETERMINATION OF A DRIVER'S LICENCE

The Committee considered a report in the absence of the third driver.

The Assistant Chief Executive-Legal explained that the driver had attended an interview with the Licensing Officer on 21 December 2012 regarding the renewal of his licence. In that interview the Licensing Officer had asked the driver if he had done any work recently. The reply given was that the driver had done a job for his operator about two weeks prior to the meeting. The job was to take a customer from London City Airport to a school in Ipswich. On being asked what kind of vehicle had been used, the driver had said it was a

Ssangyong but could not remember whether it was licensed as a private hire or hackney carriage vehicle. The Council did not currently licence any Ssangyong vehicles. The Council's Enforcement Officer, who was investigating a possible offence surrounding subcontracting under the Local Government (Miscellaneous Provisions) Act 1976 emailed the driver to question him regarding the journey he had mentioned. The response given to this email, as detailed in the report to the Committee, prompted the Enforcement Officer to invite the driver to an Interview Under Caution due to a suspicion that he had made a false statement to obtain a licence which was an offence.

Members requested the Licensing Officer be called back to the meeting to answer questions.

The Licensing Officer on his return to the meeting was asked to explain his interpretation of the statement of the driver in his email of 21 January 2013 'I will point out at this time that any comment to Mr Hardy was after I had renewed my licence.' The Licensing Officer said he had spoken to the driver when he interviewed him in connection with the renewal of his licence on 21 December 2012. The driver had in reply to a question said he had done a job for the operator a couple of weeks before, from London City Airport to a school in Ipswich.

Members asked the Licensing Officer how he interpreted the statement in the driver's email of 8 January 2013 'the reason I originally told you I did was because I thought my taxi licence would not be renewed, having not worked for so long.' The Licensing Officer said how many times the driver used his licence was up to him.

The Committee withdrew at 10.45am to deliberate and returned at 12.00 noon to give its decision.

Decision

Mr Heathorn is licensed by the Council as a hackney carriage/private hire driver. Apparently this is not his full time job. He is also employed as a HGV driver. When he acts as a licensed driver he is employed by either Airport Executive Cars or Airport Taxis Mountfitchet Ltd. It is not clear which as his last application for renewal of his licence states that he works for the former but in a subsequent e-mail he said he works for the latter. Both of these businesses are owned by Mr Peter Burgon.

In December 2012 Mr Heathorn applied to renew his driver's licence. At the time there appeared to be no reason not to grant the application so the licence was issued under delegated powers. On 21 December 2012 Mr Heathorn attended the council offices to collect his licence. Mr Hardy met Mr Heathorn in reception to hand the licence over. During the course of the conversation Mr Hardy asked if Mr Heathorn was still working for Mr Burgon. Mr Heathorn confirmed that he was. Mr Hardy then asked if Mr Heathorn had done any work recently as he was aware that Mr Burgon did not have any

cars licensed by the Council at that time. Mr Heathorn replied that he had done a job for Mr Burgon about 2 weeks earlier taking a client from London City Airport to a school in Ipswich. Mr Hardy then asked what type of vehicle Mr Heathorn had driven. Mr Heathorn said it was a Ssangyong but he could not recall whether it was a private hire vehicle or a hackney carriage. Mr Hardy has informed the committee that the Council did not licence any such vehicles at the time.

The information given to Mr Hardy gave suspicion about possible offences being committed under the Local Government (Miscellaneous Provisions) Act 1976. An enforcement officer, Mr Chamberlain, sent an e-mail to Mr Heathorn asking a number of questions about this particular trip. Mr Heathorn replied that "I would like to state that I have done work for Airport Taxis Mountfitchet Ltd and not Airport Executive Cars as you have mentioned. As per our telephone conversation I confirmed that I did not do an airport run before Christmas and the reason I originally told you that I did was because I thought my taxi licence would not be renewed having not worked for so long. After our previous conversation I feel that the rest of the questions you have asked me are irrelevant as the job never took place".

The statement that Mr Heathorn "thought [his] taxi licence would not be renewed" suggested that he may have made a false statement in order to procure the grant of a licence. Mr Chamberlain therefore invited Mr Heathorn to an interview under caution. Mr Heathorn responded to that invitation by way of e-mail in which he said "... As I had outlined in our conversation the comment I had made to Mr Hardy was an error of facts. ... "I will point out at this time that any comment to Mr Hardy was after I had renewed my licence."

Mr Heathorn declined to attend the interview under caution (as is his right). He was notified of the meeting today and was sent a copy of the committee report. He has not attended today and has not given any explanation for his non-attendance.

The Committee having considered the evidence before it, finds on the balance of probabilities that approximately 2 weeks prior to 21 December 2012 Mr Heathorn undertook a job collecting a passenger from London City Airport to a school in Ipswich. Mr Burgon is an operator licensed by this Council. As such Mr Burgon can only use vehicles licensed by this Council to fulfil bookings taken by him. The Committee also find as a fact that the vehicle used for that journey was a Ssangyong as stated by Mr Heathorn to Mr Hardy and that the vehicle was not licensed by this Council. On the balance of probabilities therefore Mr Burgon had committed an offence under s. 46 (1)(e) Local Government (Miscellaneous Provisions) Act 1976 of operating a private hire vehicle when a vehicle licence under s.48 of the Act was not in force. By driving the vehicle Mr Heathorn was aiding and abetting that offence.

The committee does not accept the explanations given by Mr Heathorn in his e-mails to Mr Chamberlain. Firstly the details of the journey given to Mr Hardy were too precise to have been fabricated on the spur of the moment. Secondly Mr Heathorn's e-mails contradict themselves. In his e-mail of 8 January 2013 Mr Heathorn said that he lied to Mr Hardy because he was

thought that his licence would not be renewed as he had not worked for some time. However in his e-mail of 21 January Mr Heathorn says (as was in fact the case) that his comments to Mr Hardy were after his licence had been renewed. There was therefore no reason why he should seek to mislead Mr Hardy.

It seems clear to the Committee that Mr Heathorn did tell Mr Hardy the truth at their meeting on 21 December and that having subsequently realised that the journey which he had undertaken involved the commission of an offence he then tried to cover it up by pretending that the information given to Mr Hardy was untrue. The Committee also note that Mr Heathorn failed to assist with an investigation into the suspected offence. It is his right not to attend an interview under caution and also he is not obliged to attend before the Committee today but the Committee is entitled to, and does, draw adverse inferences from these matters.

The Committee find that Mr Heathorn has acted as a private hire or hackney carriage driver in contravention of the law in that he drove as a private hire vehicle or hackney carriage a car which was not licensed by this Council. Instead of assisting an investigation into this matter he tried to cover things up. It is essential that drivers should be honest with the Council which licenses them. Mr Heathorn has demonstrated that his honesty cannot be relied upon. In the circumstances the Committee is not satisfied that Mr Heathorn remains a fit and proper person to hold a driver's licence and therefore revokes his licence for any other reasonable cause under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 12.05pm.