

**EXTRAORINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 3pm on 20 MARCH 2013**

Present: Councillor D Perry - Chairman.
Councillors J Davey, E Hicks 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).

LIC43 **DECLARATIONS OF INTEREST**

There were no declarations of interest.

LIC44 **DETERMINATION OF A PREMISES LICENCE**

The Chairman welcomed to the meeting Mr J Judge, the applicant for the premises licence and proprietor of Bretts Restaurant; Mr D Parker-Bowles, representing the landlord company; and Mr J Scanlon, who had lodged representations objecting to the application.

Mr Judge confirmed that he had received the Licensing Officer's report.

The Licensing Officer presented his report. He said that Mr Judge had that morning been granted his personal alcohol licence. He drew attention to the operating schedule showing how the licensing objectives under the Licensing Act 2003 would be met and setting out the licensable activities which were sought, which were:

- (a) Live Music indoors only on every day of the week between the hours of 12 noon to 12 midnight.
- (b) Recorded Music indoors only on every day of the week between the hours of 12 noon and 12 midnight.
- (c) Performance of Dance indoors only on every day of the week between the hours of 12 noon and 12 midnight.
- (d) The sale by retail of alcohol for consumption both on and off the premises on every day of the week between the hours of 12noon and 12 midnight.
- (e) The hours the premises are open to the public will be from 12noon to 12 midnight on every day of the week.

The Licensing Officer said copies of the application had been served on the responsible authorities, none of which had made representations. He reminded Members that if they wished to impose conditions, such conditions

must be appropriate and proportionate to promote the licensing objective to which representations made related.

Members asked about the current licensing status of the business.

The Assistant Chief Executive-Legal explained that under previous management the business had had a premises licence, which did not cover regulated entertainment and which had now lapsed. Mr Judge had taken ownership, and now sought a premises licence which included the addition of regulated entertainment. Up until now he had obtained a series of Temporary Event Notices to enable such entertainment to take place.

The Licensing Officer said he was aware of no complaints about the business during the time it had operated under its previous licence.

In reply to a question, Mr Judge said there was CCTV throughout the premises.

Mr Scanlon asked about the regulated hours under the previous licence. The Assistant Chief Executive-Legal said there was no difference between this and the previous licence in the number of hours sought during which sales of alcohol could be made. The difference between the previous licence and this one was that the latter included regulated entertainment during the same opening hours as previously.

Mr Scanlon made a statement.

He said he lived 50 yards from where the regulated activity would be taking place; and the premises had been run as a farm shop for many years. If the licence were granted his family would be exposed to a type of activity which was unacceptable and not befitting a small village. He was concerned about any increase in the car park lighting as already lighting in the car park shone into his property.

Mr Scanlon said he was concerned that traffic associated with the premises would cause his household significant disruption.

The Chairman said no evidence had been submitted regarding disturbance caused by traffic.

Mr Scanlon agreed there was not yet any evidence of traffic disturbance but said he was concerned that one-off events held under Temporary Event Notices were completely different to a business which could offer such entertainment seven days a week.

In reply to a member question regarding the distance of his house from Bretts Farm, Mr Scanlon said the edge of the premises' car park was approximately 50 yards from his property.

Mr Judge then made a statement. He said he had been running the business for five years, and during the last four to five years had consistently offered the same type of opening hours and events primarily for customers who tended to be aged over 50. There had been no issues of noise, and most customers left by 10.30pm. Regarding lighting, most of the floodlights pointed inwards. He had measured the distance between the restaurant premises and Mr Scanlon's property at 80 yards. He had received no complaints apart from Mr Scanlon's representations today. He anticipated he would be offering a maximum of 10 entertainment nights annually, approximately every six weeks. He had signs at the exits to his premises asking people to leave quietly. In response to a member question he said he did not have sound-monitoring equipment, but used only small speakers and a CD system.

Councillor Hicks asked Mr Judge whether it was the case, from what he had said, that he intended to hold a maximum of 10 live music nights per year but apart from that his activities would not differ substantially from those he had engaged in for the last five years. Mr Judge confirmed that this was his intention.

Councillor Loughlin said it would be possible to seek a review of the premises licence if there were breaches of the operating conditions.

Mr Scanlon said he was concerned that the application for a new premises licence would enable the business to offer entertainment as described not just on Thursdays, Fridays and Saturdays, but on all seven nights of the week, and not just 10 times a year but throughout the year.

The Assistant Chief Executive-Legal said the courts would look at how the business was run, not what had been applied for. If the use of the premises gave rise to nuisance then review could be sought.

Members commented that it was usual for premises licence applications to seek a wider range of dates and times than those which would in practice be used.

The Assistant Chief Executive-Legal said as Temporary Events Notices cost £21 each it made sense for the business to be able to offer regulated entertainment under its premises licence.

The applicant confirmed that the premises had some noise reduction features such as double glazing and curtaining.

At 3.35pm the Committee withdrew to consider the application, and returned at 3.40pm to give its decision.

DECISION

The Chairman said the Committee found no reason not to grant the licence. The Chairman thanked Mr Scanlon for attending to make representations, and

said that a review of the licence would be an option if there should be any problems arising in the future.

LIC45

DETERMINATION OF AN OPERATORS LICENCE

The Chairman welcomed the operator, Mr Cronshaw, and his representative, Mr Drinkwater.

Mr Drinkwater requested an adjournment in accordance with written representations made, pending proceedings against Mr Cronshaw in the Magistrates' Court.

The Assistant Chief Executive-Legal said deferral was not appropriate, as he had already notified to the operator's solicitor, for the following reasons: the standard of proof was different between the Magistrates' Court and matters determined by Committee. For the Magistrates, the burden of proof was beyond reasonable doubt, but for the Committee, it was the balance of probability. An acquittal by the Magistrates would not prevent Members coming to a different conclusion on the lower standard of proof. A further reason why it was not appropriate to adjourn was because the grounds on which the licence could be suspended or revoked were for non-compliance with conditions, with no specific reference to conviction. Another factor was the conduct on the part of the operator, which the Committee might consider came within "any other reasonable cause". These factors were those the Committee had to take into account today, and none required deferral of the matter. However, if the Committee were to take action today against Mr Cronshaw, then if he chose not to appeal against that decision then it might not be in the public interest to proceed with the prosecution.

The Committee withdrew at 4pm to consider the request for adjournment.

At 4.05pm the Committee returned, and the Chairman informed the operator and Mr Drinkwater that the request for adjournment was refused for the reasons given by the Assistant Chief Executive-Legal.

The Enforcement Officer presented his report. Mr Drinkwater confirmed that the operator had seen a copy of the report.

Mr Drinkwater raised various points. He asked the Committee to consider an additional recommendation that it should take no action. He referred to the paragraph in the report regarding records the operator had maintained discussed during the interview under caution, and said he was concerned at the omission of any reference to a new register which Mr Cronshaw had subsequently forwarded to the Enforcement Officer.

The Enforcement Officer said the record supplied by Mr Drinkwater today was not available to him at the time the interview under caution took place, and the vehicle weekly log was not part of the same document for him to refer to.

Mr Drinkwater referred to the new private hire register which had today been sent to the Enforcement Officer and asked whether he had taken a copy of that document in the second interview under caution. The Enforcement Officer said he had done so, but that this was an incomplete document, showing just the intention of how to keep records in the future.

Mr Drinkwater referred to the driver details which he said had accidentally been omitted due to page formatting. He said the document sent earlier today contained all necessary information. The Enforcement Officer said that the reference in the report to the register prior to 1 January 2013 related to the version available earlier in which this information was not included.

Mr Drinkwater referred to the interview under caution dated 28 January 2013. He suggested to the Enforcement Officer that in putting the question "do you admit the offence I quoted"? he had put a degree of pressure on Mr Cronshaw. He said Mr Cronshaw's answer of "Well yes yeah" indicated reluctance to answer such a question in relation to what was merely a formatting mistake in a document.

The Enforcement Officer said he did not agree. He said Mr Cronshaw had had his rights read out to him at the start of the interview, and was aware that he did not have to answer.

The Chairman asked about the time of day when police had stopped the vehicle referred to in the report, which was not licensed by this authority. The Enforcement Officer said this had taken place at 11.40am on 19 November 2012.

The Chairman asked why the private hire register document was headed Stansted Transport Hire. He asked the Enforcement Officer whether he had been given any other documents with that heading. The Enforcement Officer confirmed that he had not.

Mr Cronshaw then made a statement, prompted by questions put to him by Mr Drinkwater. He said he had supplied at the first interview a box of lever arch files detailing all Ardent's bookings from July 2012 to that date. He said he had offered the information but the Enforcement Officer had not taken copies. He also took with him his book of records of driver details, vehicles and insurance and had shown this to the Enforcement Officer. Mr Drinkwater said that these documents satisfied the operator's licensing conditions. Mr Cronshaw said he had also supplied records of bookings and Ardent's bookings.

Mr Drinkwater said his client had strong management experience, and had an ethos of compliance and continuous improvement, as shown by the fact that after the first meeting with enforcement officers he had developed his records and had become increasingly compliant and this improvement was shared with the Enforcement Officer at the second interview.

Mr Drinkwater said the documentation of Stansted Transport Services and Ardent Parking Ltd together provided all the information required to be compliant, and the Stansted Transport Services weekly log which had been provided today included information on drivers and vehicles. The information might not be in register format but had been available throughout the process, and had been shown to the Enforcement Officer who had acknowledged receipt of it. It was Mr Cronshaw's view that all information had now been brought together. The improved register had now been in use for three months, and had been used on an experimental basis from 16 December 2012. The weekly logs which Mr Cronshaw had now supplied meant that all documentation was now in compliance.

The Chairman said he was at a loss to understand Mr Cronshaw's relationship with another company. It was up to Mr Cronshaw to keep records not to have them supplied to him by a third party.

Mr Cronshaw said the driver's log stayed in the vehicle; Ardent was his customer, so drivers' bookings had to be sent to him.

The Chairman asked whether it was the case that his records comprised bookings made by a third party. Mr Cronshaw confirmed that this was so.

The Chairman asked what control Mr Cronshaw had over who used the vehicles, bearing in mind the fact that they were stored overnight at a secure location and that when one of the drivers had been stopped by police this had occurred at 11.40am. He was concerned at the level of personal knowledge Mr Cronshaw had regarding those vehicles.

Mr Cronshaw said he insisted each driver filled in a log which he collected.

Councillor Loughlin asked Mr Cronshaw to elucidate his statement during the interview of 28 January that the records he was keeping were "not 100 per cent accurate". Mr Cronshaw said this was because he had made a mistake on the spreadsheet, which had since been corrected. He reiterated that even though that line had been omitted, the drivers' records did have the correct information.

Councillor Loughlin asked questions regarding the invoice from Ardent Parking. Mr Cronshaw said the invoice had been incorrect in that he had not provided consultancy services but transport services in relation to hire of a vehicle.

Councillor Hicks said that the report stated that Mr Cronshaw had explained that drivers were self-employed but were paid direct by Ardent Parking. Mr Cronshaw confirmed that this was correct, except in his own case as he invoiced for his own services.

Councillor Hicks asked whether it was the case that records of bookings kept at Ardent Parking were emailed to him weekly or monthly. Mr Cronshaw said he now received this information daily. Councillor Hicks said the sheets

appeared to have been emailed, and from these Mr Cronshaw made his own records, which indicated that he made his records 'after the event' and that Mr Cronshaw was not in direct contact with his drivers.

Councillor Hicks asked Mr Cronshaw whether he was changing this arrangement.

Mr Cronshaw said this was correct, that he now collected the sheets from the vehicles every other day.

Councillor Hicks asked about Mr Cronshaw's requirement referred to in the report that he asked the management of Ardent Parking to sign to make sure that only licensed drivers were used. He said obtaining such a signature was irrelevant as far as the licensing authority was concerned, as the Council did not licence Ardent Parking but was only concerned with Mr Cronshaw. Agreements he made with third parties were not relevant to his responsibilities as a licensed operator and it was not possible to delegate his responsibilities to another.

Mr Cronshaw said he required Ardent Parking to give him written assurance simply for his own peace of mind.

Councillor Hicks referred to the Enforcement Officer's report stating that he had been asked to provide his records of private hire bookings for the last six months, and asked whether it was the case that the records did not show the driver and vehicle details.

Mr Cronshaw said the records were kept in the vehicles, but he had now designed a new sheet. Ardent Parking's records contained the customer name, vehicle registration, driver details, private hire plate, the time, date, number of passengers, and destination.

The Chairman asked whether Mr Cronshaw had done any checks to see whether the drivers named on the sheets were in fact the ones who had driven.

Mr Cronshaw said he had not.

The Chairman asked whether he could be satisfied that the named driver was the actual driver, and suggested that he could not.

Mr Cronshaw said the forms were filled in by the drivers.

Questions were then put to Mr Cronshaw regarding the nature of his contract with Ardent Parking. Mr Cronshaw said that following the initial six months the contract had not been renewed but had become ongoing because he needed the revenue. Ardent Parking were still taking the bookings.

The Assistant Chief Executive-Legal asked him to clarify the position, asking Mr Cronshaw to confirm that he did not own Ardent Parking, was not a partner in the firm, that they did not employ him; and yet they took the bookings.

Mr Cronshaw confirmed that this was the case.

The Assistant Chief Executive-Legal asked who allocated drivers, and who did so during the overnight period.

Mr Cronshaw said Ardent Parking allocated drivers,

The Assistant Chief Executive put to Mr Cronshaw that Ardent Parking managed the drivers and which driver was allocated to a particular job was down to Ardent Parking.

Mr Cronshaw said yes.

Mr Drinkwater suggested that Mr Cronshaw agreed rotas with Ardent Parking.

Mr Cronshaw agreed that this was so, and said he vetted and interviewed drivers.

Mr Drinkwater then summed up. He referred to the offer of Mr Cronshaw to reach a negotiated settlement; the unreasonableness of prosecuting for failing to keep proper records when this, in his submission, had not been admitted in the first interview under caution, and when in his submission Mr Cronshaw had been put under pressure in the second interview under caution. The contention that Mr Cronshaw had been merely allowing Ardent Parking to operate under his licence was denied. Mr Cronshaw had taken steps to improve his record keeping; and the vehicle weekly log taken together with the documents kept by Mr Cronshaw satisfied the records requirement. There had been complete compliance since January 2013 and the Council had had available all information to indicate total compliance. Mr Cronshaw had held up his hand in relation to the incident where an unlicensed driver had used the vehicle for which he should be given credit. That incident was a one-off. Mr Cronshaw remained a fit and proper person, he had suffered stress due to this situation, he had the support of ULODA and he asked that the Committee take no further action.

Councillor Loughlin asked for clarification of the reference to pressure being placed on Mr Cronshaw during the second interview. She said she did not see any reason for such an inference to be made; the interview was taped; there was nothing in the exchange to indicate there had been pressure brought to bear. She felt the claim that there had been pressure was misleading and she invited Mr Drinkwater to change his choice of wording.

Mr Drinkwater said Mr Cronshaw had felt cornered and he would describe his reaction to that questioning as "reluctant".

The Assistant Chief Executive-Legal said he challenged a case being made on behalf of Mr Cronshaw for being in compliance with proper record-keeping on the basis that the information had been available throughout, although kept in different places. This approach was misguided as records had to be recorded individually, in advance of jobs being undertaken and had to be recorded in a register. The weekly log was a separate document and could not be joined up with Ardent Parking's records. The way the operation had been described was that Ardent Parking was Mr Cronshaw's customer, in which case he should be assigning vehicles to take Ardent Parking's bookings. It seemed he had not been doing that, as it appeared he just obtained information of who took the booking after the event. He invited Mr Drinkwater to comment on this point. Regarding Mr Cronshaw's current circumstances, it might assist the Committee to know what work he now had and how many drivers, as he noted that he now stated he had school contracts, but that in the interview under caution he said he had lost all such contracts.

Mr Cronshaw said he worked alone.

Mr Drinkwater said Mr Cronshaw had lost the school contract work in July 2012, that Ardent Parking was his sole source of revenue apart from work as a relief driver for other operators. In answer to questions Mr Cronshaw said his only source of income now was from Ardent Parking and that he would be tendering for the school contracts again at the end of the month.

At 5.20pm the Committee withdrew to consider its decision, and at 5.50pm returned.

Decision

Having heard from Mr Cronshaw and Mr Drinkwater this afternoon the Committee is not satisfied that Mr Cronshaw is a fit and proper person to hold an operator's licence. It appears to the committee that Mr Cronshaw is acting as a front for Ardent Parking. The owner of that firm, Mr Makepeace, was refused an operator's licence by this Council as he was not considered to be fit and proper. Under the arrangement with Ardent Parking Ardent allocate bookings and allocate drivers (who are paid directly by Ardent) for those bookings. Mr Cronshaw does not appear to have any active part in managing the business at all.

As the Committee is not satisfied that Mr Cronshaw is a fit and proper person his operator's licence will be revoked under section 62 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.

Due to IT issues a full report on this decision will follow (please refer to the note appended to these Minutes).

The Assistant Chief Executive-Legal informed Mr Cronshaw of his right to appeal within 21 days following receipt of the notice of the decision.

LIC46

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Assistant Chief Executive-Legal said the matter listed as item 4 on the agenda had been withdrawn.

The meeting ended at 5.55pm.

FULL DECISION NOTICE IN RESPECT OF MINUTE LIC47 ABOVE

Mr Cronshaw has been a private hire operator licensed by this council since 2004. He trades under the style of Stansted Transport Services. Until about July 2012 his main source of income as an operator came from school contracts. Unfortunately the contracts he had come to an end and were not renewed. At about the same time Mr Cronshaw received a request for assistance from Ardent Parking. That firm runs an airport parking and transfer service. The transfer service, taking customers to and from Stansted Airport, falls within the definition of private hire which means that the usual licences are required under the Local Government (Miscellaneous Provisions) Act 1976. An operator's licence was previously held on behalf of Ardent Parking but this had lapsed and was not renewed. An application for the grant of a new operator's licence was made by a Mr Makepeace, understood to be the owner or senior partner of Ardent Parking. However this was refused in May 2012 as the Committee were not satisfied that Mr Makepeace was a fit and proper person. Ardent approached Mr Cronshaw to act as an operator on its behalf in connection with the transfer of passengers.

It appears from the papers before the Committee that Mr Cronshaw applied to licence a vehicle owned by Ardent Parking and that enquiry was made of Mr Cronshaw as to the nature of his relationship with that firm. On 12 July 2012 Mr Cronshaw wrote to the Council stating "My relationship with Ardent Parking is purely a business one. They have asked me to provide a service to take their customers from their premises to the airport and take them back when they return from their trips. I have now purchased their vehicle registration number SG54BVM." From other documents placed before the Committee the Committee infer that the vehicle licence for that car was granted.

On 19 November 2012 police officers on duty saw vehicle SG54BVM being driven by a man known to them as Timothy Dodds, someone they knew did not have a private hire driver's licence. The vehicle bore the livery of Ardent Parking and also had its vehicle licence plate number 966 correctly displayed on the vehicle. The officers stopped the vehicle and ascertained that Mr Dodds was not insured to drive it as he was not a licensed private hire driver. The officers arranged for the vehicle to be collected by an employee of Mr Cronshaw's who was licensed and therefore insured and reported the matter to the Council. Enforcement officers then commenced an investigation and in that connection obtained copies of Mr Cronshaw's records of bookings.

Following the investigation Mr Cronshaw was interviewed under caution on 2 occasions each time in the presence of his trade representative Mr Barry Drinkwater. On the first occasion Mr Cronshaw admitted to an offence of operating a private hire vehicle with an unlicensed driver. In mitigation he said that he had left others to run the business while he was on holiday and they had not realised that it was an offence for an unlicensed driver to drive the vehicle if it was not being used for transporting passengers. At that interview Mr Cronshaw did not admit the offence of failing to keep records in accordance with the conditions on his licence, although the basis of that denial is not clear.

After that interview Mr Cronshaw produced further records for examination. These consisted of a reproduction of Ardent Parking's records and a vehicle weekly log sheet giving details of a vehicle, the date, start and finish mileage, miles covered and the driver's name. Mr Cronshaw was interviewed under caution with regard to these records. At the conclusion of the interview Mr Cronshaw admitted the offence of failing to keep records as required by conditions issued by this Council.

Mr Drinkwater on behalf of Mr Cronshaw advanced an argument that the records Mr Cronshaw had produced did comply with the Council's conditions. However that clearly is not the case. The conditions of the licence require an operator to keep a record of every booking of a private hire vehicle invited or accepted on his behalf in a register containing certain prescribed information, including the name of the driver and the private hire vehicle number. The Act requires such records to be made by the operator before the commencement

of each journey. What happened here according to Mr Cronshaw is that Ardent Parking kept records of its customers which it forwarded to Mr Cronshaw by e-mail either weekly or monthly from which Mr Cronshaw makes up his records. Those records do not identify the vehicle or driver used for any journey. The vehicle weekly log is said to be kept in the vehicle and completed by the drivers. Leaving aside the failure to keep the records in a register which should contain all the information required by the conditions it is not possible by comparing the log with the records to identify which driver using which vehicle conveyed which passengers.

On the balance of probabilities the Committee find as facts that:-

1. Mr Cronshaw, as admitted by him, committed an offence of operating a private hire vehicle being driven by an unlicensed driver
2. Mr Cronshaw has committed a further offence of failing to keep records prior to the commencement of a journey in the form and containing such conditions as the Council has prescribed by conditions in his licence in that:-
 - a. He did not make up his records before the commencement of a journey but sometime after the journey's had been completed
 - b. The records were not kept in a register as required but involved examination of 2 pieces of paper
 - c. The records produced did not identify which driver and vehicle were used in respect of any particular job.
 - d. The records do not state the private hire vehicle number.

An operator's licence may be suspended or revoked on the ground that there has been an offence under or non-compliance with Part II Local Government (Miscellaneous Provisions) Act 1976. It is not necessary for there to be a conviction for that purpose.

On consideration of the papers and hearing evidence and representations from Mr Cronshaw and Mr Drinkwater further issues came to light which show that Mr Cronshaw was not operating the business at all but was effectively allowing his operator's licence to be used by someone who had been refused such a licence as he was not considered to be a fit and proper person. The facts that support that conclusion were provided by Mr Cronshaw and are these:-

1. Mr Cronshaw has no interest in Ardent Parking and vice versa. They have, as Mr Cronshaw put it in his letter of 12 July 2012, a business relationship.
2. Mr Cronshaw does not take bookings for transfers. The bookings are taken by Ardent Parking. Details of the bookings are passed on after the event.
3. Mr Cronshaw does not receive any money in respect of individual bookings. He is paid a weekly fee of £200. In the invoice the Committee has seen this is referred to as a "consultancy fee". Mr Cronshaw said that this was an error on behalf of his wife and partner and that the invoices are now in respect of "transportation services".
4. Mr Cronshaw does not employ any drivers. The drivers are paid directly by Ardent Parking.
5. Mr Cronshaw does not allocate drivers to journeys. This again is undertaken by Ardent Parking

The offences previously referred to came about because Mr Cronshaw has no management responsibilities or control in respect of this operation whatsoever. He is merely providing a front for Ardent Parking. Although Mr Cronshaw holds the operator's licence under which Ardent's business purports to operate in reality what is happening is that a private hire business is being run by a firm the proprietor or senior partner of which is not considered to be a fit and proper person to hold an operator's licence.

The fact that Mr Cronshaw allows an unlicensed person who was considered to be not fit and proper to operate under the authority of his licence is a very serious matter. Coupled with the 2 offences Mr Cronshaw has admitted to it appears to the Committee that Mr Cronshaw is unfit to hold a private hire operator's licence.

In mitigation it was submitted that Mr Cronshaw has changed his approach to record keeping and that he monitors who is driving vehicles more strictly than he was before the offences came to light. It was suggested on his behalf that the type of business being undertaken (transferring air passengers from a car park to the airport and back) is different from the usual private hire operation in that it is customers of the parking company who are the passengers. The Committee do not accept this latter point. As Mr Cronshaw correctly said in his second interview under caution "the hirer is actually Ardent Parking". If Mr Cronshaw were running a bona fide business instead of acting as a front for Ardent then Ardent would pre-book with him when it

wanted its customers transferred to or from the airport. Mr Cronshaw or his employees on his behalf would record those bookings in accordance with the legislation and conditions of licence and Mr Cronshaw or his employees on his behalf would allocate the vehicles and drivers to the job. As Mr Cronshaw expressed himself before the Committee this will not happen. Bookings will continue to be taken by Ardent; Ardent will continue to provide historic records of those bookings and will continue to allocate drivers and vehicles. Mr Cronshaw acknowledged that he has no way of checking to ensure that drivers who sign the weekly vehicle log actually undertake the journeys they sign for.

Having reached the conclusion that Mr Cronshaw is not a fit and proper person and having heard the measures which he says he has put in place to try and comply with the legislation which are clearly inadequate for that purpose the Committee revokes his operator's licence under s.62(1)(b) Local Government (Miscellaneous Provisions) Act 1976.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 27
MARCH 2013**

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

Officers present: M Perry (Assistant Chief Executive-Legal), R Dobson
(Democratic Services Officer), M Hardy (Licensing Officer) and G
Smith (Head of Environmental Health).

Also present: Mr B Drinkwater, Mr R Ellis, Mr R Sinnott (Uttlesford Licensed
Operators and Drivers Association); Mr A Mahoney and Mr
Hodgson.

LIC47

PUBLIC SPEAKING

Mr Drinkwater and Mr Mahoney made statements, summaries of which are
attached to these Minutes.

LIC48 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Salmon.

LIC49 **MINUTES**

The minutes of the following meetings were received and signed as a correct record:

MINUTES OF THE MEETING HELD ON 24 OCTOBER 2012

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 29 OCTOBER 2012

MATTERS ARISING

(i) Minute LIC20 – Determination of a private hire driver’s licence

The Assistant Chief Executive-Legal said Mr Burgon had appealed the decision of the Committee to refuse the application for a private hire driver’s licence. The appeal at the Magistrates’ Court had been unsuccessful, and Mr Burgin had appealed to the Crown Court. This hearing was to take place on 17 May.

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 26 NOVEMBER 2012

(ii) Minute LIC21 – Determination of a private hire drivers’ licence

The Assistant Chief Executive-Legal said Mr Kalam had not appealed the refusal of the renewal of his licence.

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 18 DECEMBER 2012

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 23 JANUARY 2013

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 30 JANUARY 2013

MINUTES OF THE EXTRAORDINARY MEETING HELD ON 7 FEBRUARY 2013

(iii) Minute LIC31 – consideration of a film classification request

Councillor Loughlin said she had been present at the meeting but was not recorded as having attended. The Committee agreed that the Minutes should be amended accordingly.

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 18
FEBRUARY 2013**

**MINUTES OF THE EXTRAORDINARY MEETING HELD ON 25
FEBRUARY 2013**

(iv) Minute LIC40 – determination of a driver's licence

The Assistant Chief Executive-Legal said there had been no appeal, nor had the driver replied to an invitation to make a fresh application.

(v) Minute LIC42 – determination of a driver's licence

There had been no appeal in this matter.

LIC50

DETERMINATION OF DRIVERS' LICENCES

The Chairman said there were three matters before the Committee this evening, and bearing in mind the Committee's intention to take a proportionate and fair view of matters for determination, he would suggest that they be dealt with without debate.

The Assistant Chief Executive-Legal said all three items which were Part 1 matters, relating to Mr Rodriguez, Mr Hodgson and Mr McClure, related to minor speeding offences to be dealt with by the Magistrates' Court. All these individuals were likely to meet the Council's licensing standards. In the unlikely event that any were to receive 6 points on their licence, he would bring that matter back before the Committee. There was a part 2 matter for determination on the agenda, on which officers would provide an update at the end of the meeting.

Members agreed that it was unnecessary for such cases to come before the Committee in future and that the scheme of delegation should be amended to allow the Assistant Chief Executive – Legal to grant licences in these circumstances

RESOLVED

- (i) That the licences for Messers Rodriguez, Hodgson and McClure be granted

- (ii) The Assistant Chief Executive-Legal have delegated authority to grant licences in cases where a driver has a pending prosecution for a motoring offence which is in the opinion of the Assistant Chief Executive – Legal unlikely to attract 6 points or more on the driver’s licence.

LIC51

TACIT CONSENT

The Committee considered a report which informed members of the requirement to have arrangements for tacit consent in respect of certain grants of licences and to seek Members’ approval of a tacit consent regime and exceptions thereto.

The Assistant Chief Executive-Legal said it was officers’ recommendation to have in place a tacit consent policy which was more stringent than in some local authorities. For example, for applications for the grant or variation of premises licences under the Licensing Act 2003 the licensing authority had a statutory duty to hold a hearing in the event that there were representations. It would be difficult in his view to see how tacit consent could apply without a hearing. He said the policy would be published on the website, subject to Members’ approval.

The Head of Environmental Health said the timescales in the report related to the number of working days deemed to be needed to consider applications and carry out necessary inspections.

Councillor Loughlin asked about the difference between registration and consent. The Assistant Chief Executive-Legal explained that registration required notification to the authority whereas consent required the exercise of discretion.

Councillor Asker asked about the types of activity for which permission was required under the Highways Act 1980.

The Assistant Chief Executive-Legal said these provisions covered the placing of chairs and tables outside restaurants. There was a dual regime because permits could be issued by this Council or by the Highways Authority, and the time period suggested in the report for consultation was to enable either to consult the other.

RESOLVED to approve the draft tacit consent scheme.

LIC52

REVIEW OF LICENSING POLICY

The Chairman thanked Members of the Licensing Task Group for the work they had undertaken in producing the report now before the Committee. The report sought Members’ approval to revisions of the Council’s standards and conditions, recommended that there should be a general amnesty of one month for drivers to notify various matters to the Council in accordance with

the obligations of their licence, and requested the Committee to adopt the Licensing Policy for the Hackney Carriage and Private Hire trades.

Mr Mahoney suggested the policy should be amended to enable the sanction of a caution to be applied if a driver was facing a speeding offence.

Councillor Morson said he agreed with the principle that the Assistant Chief Executive-Legal should be able to give a caution under his delegated powers and he proposed this suggestion. The motion was seconded by Councillor Davey, and was passed with one abstention.

RESOLVED that paragraph 6.8 of the draft licensing policy be amended to include the following highlighted words:

“Without detracting from the delegated powers and discretion of the Assistant Chief Executive-Legal it is the policy of the Council that where the matter complained of constitutes an offence under the legislation the offender should usually be the subject of **a formal caution or a prosecution**”

Councillor Morson congratulated the Licensing Task Group for the work they had done on this matter.

Councillor Loughlin asked the trade representatives present whether they were satisfied with the new policy. Mr Drinkwater, Mr Ellis, Mr Mahoney and Mr Sinnott all confirmed that the amended policy had resolved their concerns and thanked Members for the adjustments which had been made.

The Assistant Chief Executive-Legal said only two of the 16 changes had been controversial.

RESOLVED

- 1 to adopt the licensing policy (as amended) and its appendices as the Council's policy for the Hackney Carriage and Private Hire Trades
- 2 to allow for an amnesty of one month for drivers to notify the Council of any matters relevant to their licence which if not reported would otherwise bring them into breach of the conditions of their licence provided that they do not fall outside of the Council's licensing standards as a result of such matters.

LIC53

GAMBLING POLICY

The Committee considered the Council's Gambling Policy which had been updated in accordance with statutory requirements.

RESOLVED to approve a continuation of the current statement of principles under the Gambling Act 2005 in the form of the document annexed to the report before the Committee as a basis for consultation.

LIC54 **LICENSING RESERVE**

The Committee considered a report on the licensing reserve requested by members at the meeting on 24 October 2012.

The Chairman explained that there would be a full report at the July meeting.

The Assistant Chief Executive-Legal said the Council continued to be on target for achieving the eradication of the historic surplus of income over expenditure for licensing by the end of the financial year 2013/14. A meeting between the trade and finance officers would take place as soon as possible after the year end. In reply to a question from Councillor Lemon he said that all figures would be made available to the trade as a matter of course.

The report was noted.

LIC55 **EXERCISE OF DELEGATED POWERS**

The Committee considered the report of the Assistant Chief Executive-Legal on the exercise of his delegated powers since the last meeting of the Committee. The Assistant Chief Executive-Legal referred to three matters which had required consideration by the Committee because the driver was due to receive points on their licence but was otherwise a fit and proper person to hold a licence. He referred to the decision by Members at Minute LIC50 above to amend the scheme of delegation to allow the Assistant Chief Executive-Legal to grant licences in these circumstances. The Assistant Chief Executive-Legal would bring back to the Committee any matter where the driver subsequently became not fit and proper.

LIC56 **EXCLUSION OF THE PUBLIC**

RESOLVED that, under section 100I of the Local Government Act 1972, the public be excluded from the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of part 1 of Schedule 12A of the Act.

LIC57 **DETERMINATION OF A DRIVER'S LICENCE**

The Assistant Chief Executive-Legal said he had delegated powers but was not minded to exercise them in this case as the driver's licence was due to expire on 31 March, so there was no sufficient time to call another meeting. The driver had accepted a caution regarding harassment against his former partner. The Assistant Chief Executive – Legal said that further information was required and suggested that power to determine the application be delegated to him in consultation with the Chairman.

RESOLVED

The Assistant Chief Executive to have delegated authority to deal with the application in consultation with the Chairman.

LIC58

DETERMINATION OF A DRIVER'S LICENCE

The Chairman agreed to take this item as urgent business, as the driver's licence was due to expire on 31 March.

The Licensing Officer informed Members of an application regarding an owner operator who had submitted to the Council information from the police regarding an allegation of assault said to have taken place on 24 January 2010.

The Licensing Officer said an enhanced DBS check was awaited. He gave details of the incident as contained in a letter the driver had produced from Essex Police. The allegation had been made by a passenger when the driver had had a contract with a care home. The complainant, who was a vulnerable individual, had alleged that the driver had assaulted him whilst he was a passenger in his vehicle, after two other passengers had been dropped off at their destinations, resulting in bruising to his leg. Following the complaint, the contract had been terminated but after investigation the police had concluded that no further action would be taken. Four months after the incident a CRB check had been carried out, the result of which had been clear.

The Licensing Officer had also now made further enquiries with the police to establish the status of the complaint.

The Assistant Chief Executive-Legal said he had delegated power as the driver met the Council's licensing standards but he had brought the matter before the Committee because of the nature of the intelligence. If the Committee were minded to grant the licence in any event then he would do so under his delegated powers. The licence was due to expire on 31 March. In view of the timings of the Easter bank holidays unless the licence was renewed the driver/operator would not be able to operate his business until such time as the Committee could meet to determine the licence.

Members considered whether they should meet as a committee or whether they were happy for the Assistant Chief Executive-Legal to grant the licence under his delegated powers.

Councillors Perry and Lemon considered the matter should be dealt with by Committee in view of the vulnerability of the complainant which in their view ought to require the greater transparency of a further committee meeting to determine the licence.

Councillors Asker, Davey and Walters were of the view that the matter could be determined under delegated powers due to the fact that the police had not taken the investigation further at the time of the allegation and there was no medical evidence of physical injury submitted; three years had elapsed; there had been no other complaints; and the fact that the only evidence was supplied by the driver himself and not the complainant. The driver should be given credit for taking the pre-emptive step of reporting this potential issue regarding his licence.

DECISION

It was resolved by a vote of 3:2 that the licence should be granted under delegated powers.

The meeting ended at 8.45pm.

STATEMENT OF MR DRINKWATER

I have this evening circulated to Members a report of the exercise of delegated powers during the years 2011/12 and 2012/13, to date. You will see that there were 58 drivers interviewed, and in these 47 cases where action was taken. This amounts to only 0.2% of the driver total, indicating compliance by 99.8% of all drivers. The trade feels discomfited by what has been going on in the last few months, and my operator colleagues wish to address you regarding their concerns. One case related to a driver failing to wear his badge, which subsequently was dealt with by the Magistrates' Court, which found in the driver's favour. Almost 70% of cases were failure to notify the authority of fixed penalty notices or accidents. ULODA's view is that this is an issue of education not punishment.

STATEMENT OF MR MAHONEY

I refer to the written summary circulated this evening by ULODA. Regarding the review of the licensing policy, I commissioned a lawyer to advise on amendments. My main concern was that of prosecution. An owner driver using his own vehicle for social, domestic and pleasure use being required to wear his badge is draconian. I would suggest substituting this requirement with the following mechanism: when a driver commits a minor offence that he is dealt with by way of caution by the Assistant Chief Executive-Legal. This would enable the committee to see the driver within a short time, with no threat of appearing before the Magistrates'. This solution would satisfy both

the Council and the driver. Also please would the Committee give the Assistant Chief Executive-Legal additional delegated power to grant a driver's licence to a driver who has a prosecution pending for motoring offences. The driver present here tonight who is one of my drivers, has an unblemished record except for 3 points on his licence 7 years ago. He now faces appearing before the Magistrates and the imposition of further points. Such circumstances are stressful for a driver who may face losing his livelihood, and the mechanism I suggest would avoid that stress.

Regarding the licensing reserve issue, please could we agree a meeting with the trade and the accounts department as soon as possible to discuss the trade's concerns.

EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at TOWN COUNCIL OFFICES MARKET SQUARE SAFFRON WALDEN at 2.30pm on 17 APRIL 2013

Present: Councillor D Perry - Chairman.
Councillors M Lemon, J Salmon and A Walters.

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

Also present (for the determination of premises licence): John Gaunt – solicitor for Cozy Pubs Limited; Paul Cutsforth – owner, The Saracen's Head; Councillor Wendy Barron – Great Dunmow Town Council; Roger Stiffell – resident, Great Dunmow; (for the determination of driver's licence: the driver and a friend).

LIC59 **WELCOME**

The Chairman welcomed all those present and introduced members of the Committee and officers.

LIC60 **DETERMINATION OF A PREMISES LICENCE – THE SARACEN'S HEAD**

The Committee considered a report setting out an application for the variation of a premises licence for the Saracen's Head, Great Dunmow. The Licensing Officer informed Members of the location of the premises on the High Street in Dunmow. He described the provisions of the original premises licence. He said the applicant, Cozy Pubs Limited, sought a variation to the licence by increasing the licensable activities in respect of regulated entertainment, adding late night refreshment and extending the times permitted for the sale of alcohol by retail. The Licensing Officer referred to the proposed operating schedule showing how the licensing objectives would be met. He said the

Police had asked for certain conditions to be implemented should the variation be granted. The only representations which had been received were from Councillor Barron on behalf of Great Dunmow Town Council, and Mr Roger Stiffell, who lived next door to the premises.

The Chairman thanked the Licensing Officer and invited questions.

In response to a question from Councillor Barron the Licensing Officer said the licensing authorities were the Police, Fire, Health and Safety, Environmental Health, Planning, Primary Care Trust, Trading Standards, Essex County Council Children and Young People Safeguarding Board and the Licensing Authority.

In response to a question from Mr Stiffell the Licensing Officer explained that the hours during which premises were open to the public were not classed as a licensable activity but did form part of the operating schedule.

Mr Stiffell asked about the application regarding the showing of films. On behalf of the applicant Mr Gaunt said the law required that if premises were to have TV screens and broadcast non-live TV then this activity needed to be licensed. It was not uncommon for public houses to have TVs mounted on the wall.

Councillor Barron made a statement, objecting on behalf of Great Dunmow Town Council to the application on the grounds that it would contravene the licensing objectives of the prevention of crime and disorder, public safety and the prevention of public nuisance. She said the application was also contrary to the Council's aims stated in its licensing policy, referring to its intention to interpret 'public nuisance' in the widest sense. She disagreed with the impact assessment in the report with reference to community safety and the right to peaceful enjoyment of a property under human rights legislation. She said the consequences of granting the variation to the licence would affect not only the ward of Great Dunmow South but also the North ward. She said The Saracen's Head was surrounded by residential areas, which had the potential to be severely affected by the variation.

Councillor Barron went on to say that Great Dunmow Town Council objected to films being shown at the premises, and considered that activities at the premises should be confined to those allowed by the existing licence. In the past residents living nearby had suffered nuisance from noise and from crime and disorder, involving unsociable behaviour, which had coincided with late night opening at the former Lennon's Bar. Some incidents had been reported to the Police, and the Town Council had received representations from some residents and business owners. Whilst the Town Council supported business in general, these proposals represented a substantial change. Taking into account the size of the building the change could have an adverse impact on the local community in terms of antisocial behaviour attributable to drinking.

Councillor Barron said the conditions which had been suggested were insufficient mitigation. Drink-fuelled issues tended to spread to other areas.

The Saracen's Head was a listed building close to other properties, and the proposals would have a detrimental impact potentially on the sleep of nearby residents. She urged the Committee to reject the application.

The Chairman thanked Councillor Barron, and invited her to mention specific rather than potential issues.

Councillor Barron said the Police had had several antisocial behaviour reports. The Town Council did not assert that the incidents she had mentioned were attributable directly to The Saracen's Head but it was the view of the Town Council that these issues would be a potential hazard.

Mr Gaunt said there was no evidence against The Saracen's Head.

Mr Stiffell made a statement. He said he lived next door to The Saracen's Head. He had on his return from holiday on 22 March 2013 received a letter dated 11 March 2013 from the Licensing Officer inviting him as a nearby resident to make representations if he so wished on the application to vary the licence. The deadline for replies was stated in the letter to be 25 March and therefore due to the short time remaining he had ensured he submitted his response quickly. On advice from Mr Steve Sparrow, the Police Licensing Officer for Uttlesford, Mr Stiffell had then consulted surrounding residents. Three had agreed to sign a document objecting to the application. Mr Stiffell had leafleted 14 other houses and obtained 12 replies, and he had submitted all such representations to the Council.

The Chairman asked Mr Stiffell to give specific details of representations.

Mr Stiffell said his complaint included two incidents of smashed windows. He had a police incident number regarding this damage to his own property. Mr Stiffell said another problem was noise. He recounted an incident last year when the pub had had a band playing. At midnight he spoke to one of the doormen to ask that the doors be closed because the music was too loud. The doorman had replied that he could not because it was too hot. Mr Stiffell said there had also been a number of people outside smoking, and he had told the doorman 'there was trading going on'. The Chairman asked whether this was a reference to drug trading. Mr Stiffell said he would not know.

Mr Stiffell said he was concerned about the impact of increasing the licensable activities of the business as Dunmow was a small country town. This variation would attract more people from outside the area and he was concerned that 'something would kick off'. He had experienced the nuisance of glasses being left outside on his drive, people being sick, and even copulating on the drive, and he felt matters would only get worse. He felt the residents at the back of the property would also be very concerned.

The Chairman asked about the frequency of the incidents described. Mr Stiffell said his windows had been broken once this year; that he had spoken once to staff at the hotel. He had not kept a log of incidents, but felt incidents

would increase. He knew of one lady who now had to sleep in her back room due to the noise.

Councillor Walters asked whether the hotel employed security guards at the weekends.

Mr Cutsforth said only a night porter was employed but security guards were not used routinely, only for events under TENs.

Mr Gaunt drew attention to the condition requested by Police that if trading after midnight there should be door staff.

Councillor Lemon asked if there had been any occasion recently when the Police had been called to the Saracen's Head.

Mr Cutsforth said in the twelve months he had been operating the business the Police had never been called.

Mr Gaunt asked whether Mr Stiffel could say whether the antisocial behaviour he had described was from customers of The Saracen's Head rather than other premises. Mr Steffel said he could not say that this was the case as at the times in question he was in bed.

Mr Gaunt said this was an application on behalf of Cozy Pubs. Mr Cutsforth owned Cozy Pubs and operated from other premises in the district. He had acquired The Saracen's Head a year ago and had invested £1 million in the premises, which were now in very good condition. He had inherited 31 letting bedrooms which were at that time not being used, but which were now being actively promoted, and had recently gained 91% occupancy. Mr Cutsforth did not wish to detract from the accommodation side of his business. The premises had been inherited under the old licensing regime. Mr Gaunt referred to a map showing the premises, although unfortunately this was not a detailed plan.

Mr Gaunt said his had agreed with the Police certain conditions for the variation to the licence, such as CCTV and door staff. The Police had made no representations to the application, neither had Environmental Health Officers. Since May 2012 the premises had opened to 1am on eighteen occasions under TENs. There had been five TENs events this year, and no complaints about the business had been received in relation to these events.

In reply to a question from the Chairman, Mr Cutsforth said the number of people attending such events was 100 to 150. The events were not aimed at young people.

Mr Gaunt said other businesses in the town were already operating late night trading and in submitting the application to vary the licence The Saracen's Head was not a pioneer. Another business, Lennon's Bar, did not have a rear external area under its control, in contrast to The Saracen's Head which did. The determination of licence should be based on evidence, but the objections

raised by the Town Council were all speculative, with many references to 'potential' but not actual issues. The Committee should look at reality and there was no evidence from the Town Council that such issues would arise, and if they did there was the option to review.

Regarding the representations of Mr Stiffell, there had been a meeting between Mr Stiffell with Mr Cutsforth and Mr Gaunt, at which the applicant sought to explain his intentions. It was the applicant's belief that this discussion had reassured Mr Stiffell.

Regarding the determination of the application to vary the licence, Mr Gaunt said this was a significant investment for Mr Cutsforth. The Thwaites case was the authority that licensing committees should base their determination on evidence and that their decision must be reasonable and proportionate. New guidance indicated that licensing committees should accord greater stature to Police advice, and in this case the Police had no concerns regarding this application. The applicant submitted this application was reasonable and proportionate and asked the Committee to grant the variation.

Mr Cutsforth said he wished to offer reassurance as to how the premises would operate. He had no intention of hosting live music or DJ events every week. The 'party nights' held at the premises were on the last Friday of every month and most of the time the business was trading only to midnight. There was a fairly equal balance between the revenue from the guest accommodation, the bar and the restaurant, and he did not wish to distort that balance. The Saracen's Head would continue to hold these events from time to time and the repeated application for TENs was a bit of a chore.

In reply to a question from the Chairman Mr Cutsforth said he anticipated late night trading to 1am on the last Friday of the month, on Bank Holidays and at Christmas, with flexibility to do so at weekends.

Councillor Lemon asked whether the premises had air conditioning to minimise noise from open windows in summer.

Mr Cutsforth said there was no air conditioning. He had not been aware of any complaint by Mr Stiffell as referred to earlier but said that both doors of the premises doors were lobbied. The issue of air conditioning might be considered.

In reply to a question by the Licensing Officer Mr Cutsforth said the other premises he operated in the district were the Eight Bells in Saffron Walden and the Cricketer's Arms in Rickling Green.

Mr Stiffell pointed out that the plan available at the meeting was out of date in that it showed the old auction house, where there were now houses. He said the ground floor plan of the premises was also incorrect.

Mr Gaunt said due to an administrative error the plan attached to the agenda papers did not show the current layout of the premises. At the request of the Chairman he explained the layout.

Mr Stiffell said that in Shepherd's Lane there were now about a dozen houses which would be blighted by the exiting of customers to the car park and to the rear of The Saracen's Head.

Mr Gaunt apologised for the incorrect map and said the application had been properly advertised, and that only one resident had put in a representation.

Regarding an area which had been referred to as a place available for smoking, Mr Stiffell said this was part of the walkway. The security guard had told him that asking people to move to the rear of the property would give rise to trouble. He said a longer consultation period was required and more information was needed showing the downstairs facilities at the premises.

The Assistant Chief Executive Legal said he endorsed the interpretation of the Thwaites case. The Committee was only dealing with the current application. He did not accept Mr Gaunt's submission regarding current guidance about weight to be given to Police evidence in terms of the licensing objective of prevention of crime and disorder. The guidance did not mean that Committees should disregard representations made by others just because the Police had not made representations.

Mr Gaunt said it was not his intention to dismiss objections made by others in that way and he was simply making the point that the Police had made no objection.

At 3.30pm the Committee withdrew to determine the application, and at 3.35 returned.

DECISION

The Chairman gave the Committee's decision as follows:

As no representations were made by the statutory authorities, and all the issues put forward by other interested parties who made representations were speculative in nature, the Committee cannot support their objections. Those parties have the right, if problems arise, to make further representations to the statutory authorities and seek a review of the licence. The Committee grants the application to vary the licence in accordance with the application subject to the addition of the conditions set out at paragraph 12 of the report.

LIC61

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.

DETERMINATION OF A DRIVER'S LICENCE

The Committee considered a report asking Members to determine whether a driver's licence should be revoked, in that since the grant of the licence the driver had been convicted of an offence which involved dishonesty.

The Licensing Officer explained that the driver's licence was valid to 31 July 2013. The Licensing Officer set out the circumstances of the offence as described in the report. The driver had informed the authority on 4 April 2013 of her conviction for fraud relating to benefit claims following a change of circumstances which she did not declare to her local authority.

The invited the driver to make a statement. The driver said she knew she had done wrong but felt that the conviction did not affect her ability to act as a driver on a school contract. She had held a position of trust for 22 years looking after the elderly, and had worked for the past 3 years for a charity. She felt she should not be punished further and said she would suffer financial hardship if she lost her job. It would be difficult for her to find other work. She had never done anything fraudulent before. The incident had occurred at a bad time for her when she was in ill health and she asked the Committee to take all these factors into consideration.

The Chairman thanked the driver. He asked about the length of time over which the dishonesty had taken place.

The driver said the dishonesty had taken place over two years.

The Licensing Officer asked the driver to explain why she had not notified her local authority of the change in her circumstances, when she had received both a redundancy payment and pension. The driver said she had been in poor health and was depressed and had overlooked this issue.

The Assistant Chief Executive Legal explained to Members that under the Social Security Act 1992 there were two types of offence, the more serious of which involved proof of dishonesty, the lesser of which involved proof of knowledge. The certificate of conviction had not been supplied, but it seemed unlikely that the offence in this case was the lesser offence. The narrative seemed to indicate there had been two offences committed, one arising from starting work at the care home, the other arising from her commencing work as a licensed driver.

The driver said she did declare the changes in her circumstances when she started working for ECC but the council kept changing the benefits.

The Assistant Chief Executive Legal said underlying entitlement was relevant. The driver had repaid the sum of almost £10,000 which was a high sum if there was an underlying entitlement to benefit. This was clearly a very

serious offence. The driver had had legal aid, which was only available where one's liberty was at stake, and she had received a custodial sentence, indicating the serious view taken by the court.

Members had heard the driver's plea not to be punished again, and it was true that she had already been punished by the justice system. However the question before the Committee was whether she was a fit and proper person to hold a driver's licence.

At 3.55pm the Committee withdrew to determine the driver's licence. At 4.30pm the Committee returned to give its decision.

DECISION

The driver has been licensed as a driver by the council since 2010. In 2009 she was temporarily out of work and applied to Harlow District Council for housing benefit and council tax benefit. Shortly after lodging the claim she obtained work with Essex County Council. Unfortunately, she was injured shortly after starting that job and received statutory sick pay instead of her salary. Her contract was terminated in March 2010. She commenced work as a licensed driver in Uttlesford in or about August 2010. Ten months later she was interviewed for an offence of benefit fraud and her benefit stopped. The amount of benefit which had been overpaid was almost £10,000. The driver was subsequently prosecuted for an offence of dishonestly failing to notify a change of circumstances. She was given a custodial sentence, albeit suspended, a community service order and ordered to pay £550 costs.

As a result of her conviction the driver no longer meets the council's licensing standards. Councils have a duty to grant licences to those who are fit and proper persons. In determining whether a driver is fit and proper the council has a policy and members should only depart from that policy if there are good reasons for doing so.

It is essential that licensed drivers are honest. They are in a position to obtain information about customers which is sensitive and could cause members of the public to be targets of crime if it comes into the wrong hands. Parliament has underlined the importance of drivers being honest in the legislation as it is a ground for revocation of a licence that a driver has been convicted of an offence of dishonesty.

The driver's offence was a serious one. It involved proof of dishonesty. The offence was committed over an extended period of time, some two years. The amount of overpayment obtained by the fraud was substantial. The severity of the sentence demonstrates the weight the court gave to the aggravating features of the offence against what would have been very powerful mitigation, namely that the overpayment had been repaid in full before the case came to court.

Before the committee today, the driver says that if her licence is revoked she will lose her job and be forced back onto benefits. She says that she has

been punished by the courts and that the committee should not punish her further.

The committee agree that it should not take action with a view of imposing a punishment. Indeed it would be contrary to its policy to do so. Suspension of the licence is not therefore an option. The question for the committee is whether or not the driver remains a fit and proper person. In considering that question the personal circumstances of the driver are a factor which the committee cannot as a matter of law take into consideration.

The committee have heard nothing regarding the circumstances of the offence to suggest that there are any grounds for it to depart from its policy. The driver does not meet the standards required by the council and cannot therefore be considered to be a fit and proper person. Her licence is therefore revoked.

The meeting ended at 4.35pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2.30pm on 13 MAY 2013**

Present: Councillor D Perry - Chairman.
Councillors J Davey, E Hicks and A Walters.

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

Also present: in relation to item 2 on the agenda (Minute LIC66), the driver and the complainant; in relation to item 3 (Minute LIC67) the applicant, and in relation to item 4 (Minute LIC65), the driver.

LIC63 **WELCOME**

The Chairman welcomed all those present and introduced members of the Committee and officers.

LIC64 **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.

LIC65 **DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE**

The Committee considered a report regarding an application for renewal of a private hire driver's licence.

The Driver confirmed he had received a copy of the report.

The Licensing Officer said the driver had at the time of making his application for renewal correctly disclosed a pending prosecution which brought him into conflict with the Council's licensing standards. The driver had been charged with an offence under section 2(1) and (2) of the Protection from Harassment Act 1997. The driver had been summonsed to appear at the Magistrates' Court on 30 April 2013 in respect of the charge.

The Licensing Officer said the driver had explained at interview that following a separation from his wife she had lodged a complaint about him with the Police. On attending voluntarily Braintree Police Station he had been arrested on suspicion of causing harassment to his wife.

The driver had been released from custody on conditional bail to re-appear at Braintree Police Station on 17 December 2012. On that date prior to the court appearance, a Police Officer had attended the driver's home and advised him that his bail had been cancelled. He was issued with a harassment warning in accordance with Section 2 of the Protection from Harassment Act 1997, which he declined to sign, and his mobile was retained. The harassment warning related to an allegation that over an 18 month period the driver had sent over 100 text messages to his wife.

The driver had on the return of his mobile in December sent two further texts to his wife. He had also visited the home of his wife to deliver a part of a baby's crib, which he left with his wife's new partner as his wife was not present at the time. The following day the wife had made a complaint to Essex Police of further harassment by her husband. The driver had attended Braintree Police Station where he was re-arrested on suspicion of further harassment.

The driver had no questions.

In response to a question from the Chairman, the Licensing Officer said the driver had given notification on 31 March of the pending prosecution.

The driver made a statement. He said he had been a driver in Uttlesford for 14 years and had never had anything like this happen before. He had tried to settle matters with his wife, but now found himself having to defend himself in court. Whilst he had sent her over 100 texts, this was over a period of about 18 months. He had gone to the police willingly and openly.

The Chairman asked what had happened at court. The driver said a plea of not guilty had been entered and the matter had been adjourned until 28 June. He was now on unconditional bail.

Members asked questions regarding the driver's understanding of the meaning of direct or indirect contact; whether the visit mentioned in the report to drop off a crib on 5 January 2013 had been pre-arranged; whether the driver had come to terms with the break-up of his marriage and whether he could confirm that he was not interested in carrying on what could be construed as harassment of his wife.

The driver said he may have misunderstood what was required in having no contact at all with his wife, as in texting her in December it was his intention to suggest that they clear everything up so as to move on. He said he had not asked for any of this. He had complied with all Police requests, had not wished to cause his wife distress and had not thought he had done so. He had decided from 30 December 2012 that it was time to seek a divorce and he had to think of his children. His wife had previously said he should contact her when he was prepared to divorce, which was the reason why he had texted her on 30 December.

The Chairman commented that the notice of warning regarding harassment had been read to the driver and that he had refused to sign. The driver confirmed this was the case, and said he understood the Council's position in making sure he was a safe driver, however he never thought anything like this would happen.

The Assistant Chief Executive-Legal said the Committee needed to be satisfied that the driver was fit and proper. The burden of proof was on him to establish that he was fit and proper, on the balance of probabilities.

At 3pm the Committee withdrew to determine the licence, and at 3.05pm returned to give its decision.

DECISION

The Drivers' licence is renewed. The Committee warns the driver that he must comply with any requirement placed on him by the Police or by the Court.

LIC66

DETERMINATION OF A DRIVER'S LICENCE

The Committee considered a report to consider suspension or revocation of a private hire/hackney carriage driver's licence. The driver and complainant were both in attendance.

The driver confirmed he had received a copy of the report.

The Enforcement Officer said the complaint related to return journeys on 18 and 25 January 2013. The journeys had been booked by the complainant with a company, OTS Ltd, which specialised in airport transfers. The booking was to convey the complainant and her husband from their home in Suffolk to Gatwick Airport. The booking was then legitimately subcontracted by OTS Ltd to the driver.

The complainant had made a complaint to OTS Ltd after the return journey, but had received only a £5 refund and a request that she direct her grievance to Uttlesford District Council which was the licensing authority for the driver.

The report set out the allegations of the complainant regarding both the outward and return journeys of the booking and gave details of the account given by the driver at an interview with the Council's enforcement officers on 6 March 2013.

The complainant made a statement. She said the day before the outward journey bad winter weather was forecast. She and her husband decided to use OTS Limited because the company's publicity stated it would send a vehicle appropriate to the weather. The company also offered for a small additional fee a "meet and greet" service for the return journey from the Airport. The complainant had booked the meet and greet facility, as she and her husband were elderly and wished to take advantage of such a provision. The complainant said the driver had informed her that he would not carry out the meet and greet service but instead required the couple to text him once their flight had arrived, and then to make their way to the Sofitel Hotel where he would collect them.

The complainant said she and her husband had told the driver they did not know how to text as they had never before succeeded in sending one from their mobile phone.

Once their return flight had landed, the couple had therefore tried to telephone the driver twice but he did not answer. He then succeeded in contacting them, and said he would meet them at the Sofitel Hotel. The complainant and her husband attempted to find the hotel, which was difficult as they were leaving the Airport from a different area to that in which they had arrived. The walk required them to venture across several roads up and down pavements with no dropped kerbs, through torrential rain late at night. As the complainant herself was not able to carry anything heavy, her husband had to carry both sets of luggage.

Regarding the return journey in the driver's vehicle, the complainant said the engine light had been on throughout the journey, and that it was only once the engine made an unusual noise that the driver stopped to top up the oil. He had said it was the catalytic converter.

The Chairman thanked the complainant and asked if there were any questions from Members or from the driver.

The driver apologised for OTS Ltd regarding their lack of communication between all parties. He felt the matter could have been resolved more satisfactorily much earlier. He apologised that the journey had not been up to standard. He said there was nothing he could have done as the contract was with the company. He said he would have ensured the complainant received compensation at an earlier stage of the complaint which he felt had taken an inordinate length of time to resolve. He said there might have been some

confusion on the part of the complainant and referred to the long flight and the fact that she had had difficulties with baggage handling.

The complainant replied that no trolleys were permitted to be taken out of the Airport.

The driver said he had not been aware of the nature of the matter to be discussed at the interview with the Enforcement Officers. He had been licensed to drive for 12 years and had undertaken 20,000 jobs with no complaints. The interview had been intimidating for him and he had not been legally represented, nor had he realised the notes of the interview would appear in the context of a determination hearing in front of this Committee. He said there were certain points he had made which were not in the report.

The Chairman asked the driver to restrict himself to responding to the allegations against him.

The driver then made a statement, providing the Committee with written copies of it. In summary, he said he had asked OTS Ltd to keep him informed about the complaint but they had not done so. He was concerned that his livelihood was at stake. He had supplied character references to the Committee.

Members confirmed they had received these references.

The driver said he had learned lessons from the complaint. It was a point of pride for him to be on time, to keep his vehicle clean and safe, and to have a good rapport with his customers. He said there seemed to have been some confusion on the outward trip. He had tried to contact the customers and apologised to them regarding the meet and greet. Regarding his smoking in front of the customers he said he was sorry if that had caused inconvenience, but as a smoker after a drive of 45 minutes with the prospect of a journey of 2 hours ahead he had taken the opportunity to smoke at that point. He had tried to do so at a distance from the customers but had had no intention of blowing smoke in the complainant's face. He had not known of her health condition, but in future would ensure he did not smoke in front of customers.

Regarding the allegation that there were animal hairs in the back of his vehicle, he said he did not carry animals but if there were hairs that these could have been fibres from an artificial fur coat worn by one of his regular passengers, although he had valeted the car before the journey with the complainant.

Regarding the allegations about the return journey, he said the plane landed at 22.30 as scheduled, and that he tried contacting the couple several times. It was not until 23.15 that he got through to them. It was raining so he considered going to the Terminal to meet them, but he was concerned he would miss them. He apologised if there were some issues there.

He said regarding allegations about his conduct, he did not swear and he was sorry if the complainant had found anything he said offensive. He said the passengers were a nice couple and had talked with them openly on a range of

subjects. There were some things that could perhaps have been taken out of context. He agreed he had said he did not like working at weekends as it limited time with his girlfriend. However this was not an issue if he needed to work.

The Chairman asked the driver about the engine light in the vehicle. The driver explained the issue was difficult to ascertain and that he had discussed the problem when it first occurred with a garage. He had been advised the problem would probably clear if driven on the motorway. When it happened again during wet weather it had been possible to establish that, due to a design fault, water was reaching an electrical component, so he had sealed the area. The problem had not recurred until the night of the journey with the complainant. It had again been raining very hard, but when the engine management light had come on he had added oil, because he intended to get the complainant and her husband home. They had arrived at 01.30 hours.

The Chairman thanked the driver for his statement and invited questions.

Councillor Hicks said the complaints fell into two categories, contractual complaints regarding OTS Ltd, and the personal conduct of the driver. Regarding sub-contracting in future it was clearly necessary for the driver to ensure he received better instructions from the contractor, as the customer in this case was expecting a meet and greet facility. This was a contractual matter between the parties. However, this Committee was required to be concerned with the driver's behaviour. He asked whether the driver considered his behaviour was normal and that there were no exceptional problems.

The Driver said he believed this was so.

The Chairman invited the complainant to comment on the driver's statement.

The complainant responded on various points, re-affirming what she had said earlier in relation to the state of the vehicle; saying that she had deliberately booked the lift early so as to allow for plenty of time at the Airport; stating that she felt the driver could have been better prepared for the wintry weather, and saying that she considered she had booked the meet and greet service; she referred also to the engine light and said if the car was for hire it ought to have been up to scratch.

The complainant said in these difficult economic times she would not wish anyone to lose their livelihood, but she wished to ensure that lessons could be learnt. She stood by everything she had said, but everyone deserved a second chance.

Officers confirmed that on inspection the driver's vehicle was found to be in satisfactory condition.

At 3.55pm the Committee withdrew to determine the licence.

At 4.05pm the Committee returned.

DECISION

The Committee thanks the complainant, and finds her credible. The Committee feels that the behaviour of the driver on this occasion fell well below that which would be required, although it notes the driver states he has learned lessons and made changes. The way he acted is not the right way for a driver and the owner of a business to conduct himself. The Committee will take no action regarding the driver's licence but the driver should be aware that if he comes before the Committee for any reason in future he would not be treated so leniently.

LIC67

DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE

The Licensing Officer presented a report on the application to the authority for a grant of a private hire operator's licence. The applicant confirmed he had received a copy of the report.

The Licensing Officer highlighted for Members the main points of the report. The application form had revealed details of a previous conviction. The applicant did not meet the authority's licensing standards as the last previous conviction had not been spent, and would become spent on 30 March 2017.

The applicant had attended an interview with the Licensing Officer at which he had given an explanation of the circumstances leading up to his most recent appearance in court.

He had on 1 April 2009 been granted a private hire driver's licence. On 17 December 2012 he had appeared before Basildon Magistrates Court to answer a summons alleging that he used a mobile telephone whilst driving his own vehicle. The applicant already had 9 penalty points on his licence so the case had to be dealt with by a Court. The applicant pleaded not guilty to this offence and was legally represented but after a trial the Court found him guilty. He was fined £450 plus costs and was disqualified from driving for a period of 6 months. The applicant had appealed against the conviction and sentence but these were upheld at the Crown Court. The applicant had served the six month disqualification period and his licence had been reinstated on 30 September 2012.

The report also set out details of an alleged offence of benefit fraud. Due to this allegation the Licensing Committee had on 23 November 2010 met to determine the driver's licence. The decision of the Committee was that on the balance of probabilities the applicant was not fit and proper to hold a licence, and revoked his driver's licence. Subsequently the applicant had accepted an administrative penalty regarding the alleged offence. Members were made aware that the acceptance of an administrative penalty did not require an admission of guilt, but that the benefits agency could only offer an administrative penalty if it was satisfied that it had sufficient evidence to secure a conviction if the matter were taken to court.

Members heard that if the applicant were successful in obtaining a licence then he would take over a business which had been operating in the district. He did not intend to make an application for the grant of a licence to drive licensed vehicles, but would employ drivers already licensed in the district.

The applicant then made a statement. He said he wished to take over the business of a local private hire operator, as the current manager was suffering ill-health. He would pay him an amount for the losses of the business. He would like to run the business properly and said he would undertake all official checks and requirements necessary. He said he had a young family and this was his chance to take control of a business to give them financial stability. If granted the licence he planned to employ four drivers. He said that in 2010 he had gone through a difficult period, having lost both his mother and grandfather in a short space of time. He wished to take over the business in question and bring it into compliance with the licensing authority's requirements.

In reply to a question from Members, officers explained that the operator company in question had tended to be run somewhat outside the Council's supervision. It had a history of unlicensed drivers and vehicles, and the current operator had had his licence revoked and was being prosecuted for not keeping records. However, this matter was irrelevant to the current application. The applicant wished to take over the business, not its operating practices.

The Chairman asked the applicant about his previous convictions and about the acceptance of an administrative penalty for benefit fraud.

The applicant described the circumstances giving rise to the penalty for benefit fraud. He said upon getting married he had taken advice from the Job Centre regarding his wife's benefits having been stopped. He said the information he had been given was incorrect and that he had incorrectly applied for his wife's back rent to be paid. He had made a mistake during what was a difficult time for him due to bereavements in the family and he had paid back the money.

The Assistant Chief Executive-Legal referred Members to the report of the Enforcement Officer dated 23 November 2010 which indicated the issue was Job Seekers' Allowance.

The Chairman questioned the applicant regarding the acceptance of the benefit fraud administrative penalty.

The applicant said no such thing would happen again and he had learned from his mistakes. He had family responsibilities and it was his ambition to follow in his grandfather's footsteps and be a good businessman. He had taken advice already from the Council's officers to try to ensure he took all the right steps regarding his intentions for the business.

The Chairman noted the report regarding the investigation for benefit fraud stated there was strong evidence to show that the applicant made a false claim from the outset.

The applicant agreed that this would have been the case but said that he only claimed because he thought it was allowed. He accepted this was wrong.

Members asked various questions. In reply the applicant said he would be employing only those drivers from the business that he considered suitable. They would be self-employed. Regarding how payment could be made to the current proprietor of the business, the business had only made a loss last year due to how it was run, and the applicant was confident it could turn a profit. He had been involved for three and a half years in an office role at the business, in a role which did not require him to drive.

The Assistant Chief Executive-Legal said the reason that the applicant did not meet the authority's standards was the motoring offence, which had on a technicality regarding totting up been dealt with at Court. However, this offence did not count against him as an applicant to be an operator. He had a history of dishonesty regarding benefit fraud. It should be noted that the DWP had considered prosecution but had opted to offer an administrative penalty. The overpayment was £2,000, and the administrative penalty was £600.

At 4.35pm the Committee withdrew, and returned at 4.45pm to give its decision.

DECISION

The Committee has serious concerns regarding the history of the private hire operator business which the applicant wishes to take over, and would not wish to see such issues repeated. However we are prepared to grant the operator's licence to the applicant, but warn him that the business will be monitored. The Committee encourages the applicant to consult the officers of the authority when necessary. If the private hire operator does come to the attention of the authority due to any failures in running it properly then the applicant will face the risk of losing everything he has sought to achieve with the business.

The meeting ended at 4.50pm.

EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2.30pm on 4 JUNE 2013

Present: Councillor D Perry - Chairman.
Councillors J Davey, E Hicks and V Ranger.

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

Also present: Mrs King (the driver), Mr Robbins (her friend).

The Chairman welcomed all those present and introduced members of the committee and officers.

LIC2

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The committee considered a report requiring it to determine whether to revoke a combined private hire/hackney carriage driver's licence in accordance with section 61(1)(a) Local Government (Miscellaneous Provisions) Act 1976 that since the grant of the licence the driver had been convicted of an offence which involved dishonesty.

Mrs King, the driver, confirmed she had received a copy of the report.

The Licensing Officer outlined the sequence of events. Mrs King's first combined hackney carriage/private hire driver's licence had been issued on 25 October 2012, and was due to expire on 30 September 2013. On 8 May 2013 Mrs King had notified the Council that she had received 3 penalty points on her DVLA driver's licence, and that she had been convicted of fraud on 21 March 2013. The Licensing Officer said there had been no indication from Mrs King of the date when the penalty points had been incurred.

The Licensing Officer said it was a condition of Mrs King's licence, compliance with which she had agreed to when she signed the receipt for it, that she should notify the Council of any convictions or fixed penalty notices in writing within 7 days. However, the email from Mrs King to the Council on 8 May 2013 was the first notification of these matters that the Council had received from her.

The Licensing Officer took members through the circumstances set out in the report regarding the conviction for fraud. East Cambridgeshire District Council had terminated benefits paid to Mrs King, because she had failed to disclose a change of circumstances affecting her entitlement to benefit. Mrs King had alleged maladministration by that authority regarding retention of bank statements and wages slips she claimed to have produced. She had said she had not kept the documentation herself as she did not wish to be cluttered up. East Cambridgeshire District Council denied the allegation of maladministration stating that they had procedures in place which, had the matter gone to trial, would have identified any evidence that Mrs King had presented. The authority had not offered Mrs King an administrative penalty.

On 21 March Mrs King pleaded guilty at South Cambridgeshire Magistrates Court to an offence contrary to section 112(1A) and section 112 (2) Social Security Administration Act 1992. She was legally represented. The court imposed a fine of £120 and Mrs King was ordered to pay court costs of £150 and a victim surcharge of £15.

The Licensing Officer drew attention to the current application of Mrs King to East Cambridgeshire District Council for a private hire driver's licence. The date for hearing that application was 12 June 2013.

The Chairman invited Mrs King to put questions to the Licensing Officer. Mrs King said she had no questions.

In reply to a member question about the reinstatement of Mrs King's benefits, members were informed that the usual process when a discovery of fraud was made, which was to stop benefit, then make a calculation regarding underlying entitlement. Members were advised that this information was not relevant to the determination of licence.

The Chairman asked about the amount of repayment of benefit notified by East Cambridgeshire District Council.

Members were informed the overpayment was £1693.53 which was less than the £2,000 which Mrs King had reported at interview. Mrs King said outstanding amounts for repayment were now £88 Council Tax Benefit and £430 Housing Benefit.

Mrs King then made a statement. She said she couldn't prove it, she had learnt by her mistakes and had never imagined she would have any matters on her CRB. She said this type of incident would never happen again and that she loved her job.

The Chairman asked when the penalty points for speeding had been incurred.

Mrs King said she had received the penalty points on 8 May 2013, which was the same day she had emailed the Council. She explained the circumstances of the speeding offence, which were that she had thought she was entering a 40mph limit but in fact it was a 30mph zone, and that she had been pulled over by traffic police. A speed of 46mph had been recorded.

In reply to a question by the Licensing Officer Mrs King confirmed that she had signed the acknowledgement of receipt of her licence dated 25 October 2012 by which she also had agreed to abide by the conditions of her licence. She said the reason why she had not notified the Council of her court appearance within 7 days was due to her own failure to think, and that she had been distracted by other matters on her mind.

The Licensing Officer asked whether it was fair to say that it was her application to East Cambridgeshire District Council which had prompted Mrs King to tell the Council about her conviction and the excess speeding.

Mrs King agreed that this was so.

The Assistant Chief Executive-Legal said regarding the administrative penalty which had not been offered that this decision was a matter for East Cambridgeshire District Council's discretion. Mrs King had said that she had notified the Council of her change of circumstances affecting her entitlement to benefit, she had pleaded guilty at the Magistrates Court. The Committee could not go behind the conviction. The Council's policy was clear that drivers

who ceased to meet the Council's licensing standards were likely to have their licenses revoked unless a departure from that policy could be justified. The burden of proof was on the driver to show why her licence should not be revoked. Her personal circumstances were not relevant to whether she was a fit and proper person to hold a licence.

The Council had held an amnesty for drivers to notify it of any breach of condition of licence earlier this year, from 31 March to 30 April, but Mrs King had not notified the Council during that amnesty of the conviction and penalty points she had received.

The Chairman invited Mrs King to comment.

Mrs King said the reason she had pleaded guilty to the offence for which she had been convicted was that she had had no documentation left in the house because she was separating from her husband and was de-cluttering. She explained that her husband had received a custodial sentence for an offence he had committed. She said her solicitor had advised her to plead guilty as she did not wish to receive a custodial sentence herself for the sake of her family.

At 3pm the Committee withdrew to determine the licence, and returned at 3.30pm to give its decision.

DECISION

Mrs King was first licensed as a private hire/hackney carriage driver by this council on 25 October 2012. Her licence was due to expire on 30 September this year. When her licence was granted Mrs King met the Council's licensing standards in that she had no unspent convictions at that time. When her licence was issued Mrs King was given a copy of the conditions relating to drivers' licences and signed a document to acknowledge receipt which also contained an agreement to abide by the conditions. One of the conditions on the licence requires drivers to notify the council of any convictions or fixed penalty notices in writing within 7 days.

On 21 March this year Mrs King appeared before South Cambridge Magistrates Court to face a charge of benefit fraud under s.112A Social Security Administration Act 1992. The allegation was that she had failed to notify East Cambridgeshire City Council that there had been a change in her circumstances which would affect her entitlement to benefits. Mrs King pleaded guilty to the charge. She was fined £120, ordered to pay costs in the sum of £150 and a victim surcharge of £15. Mrs King should have informed the Council of this conviction by 28 March. She did not do so. It came to the Council's attention because she applied for a licence with another local authority and having disclosed the conviction to that authority she was advised to tell Uttlesford about it. When doing so she also reported that her driving licence had been endorsed with 3 points for an offence of excess speed. Mrs King informed the committee that she notified the Council of this matter on the same day that she received the fixed penalty notice which was

in respect of travelling at a speed of 46 mph in a 30 mph limit. Mrs King said she believed she was entering a 40 mph limit which was not in fact the case. Mrs King was interviewed by a licensing officer regarding the circumstances of her conviction. She maintained that she had provided East Cambridgeshire District Council with details of her change of circumstances and provided documentary proof of the same but that the council had lost the particulars. She maintained that position before the committee today. If that were correct that would be a defence to the charge. However Mrs King pleaded guilty and was convicted. Mrs King said that she pleaded guilty on the basis of legal advice. However as a matter of law the committee cannot find that a person is not guilty of an offence that he or she has been convicted of.

The Council has a duty to licence only those persons that it is satisfied are fit and proper persons to hold a licence. In determining whether an individual is a fit and proper person the Council is entitled to have policies and having adopted a policy it may determine matters in the light of that policy unless there are good reasons for departing from it. The relevant policy in this case is that drivers should have no criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974. The Council's policy states that drivers who cease to meet the Council's Licensing Standards are likely to have their licences revoked. The burden of proof is upon Mrs King to demonstrate to the committee on the balance of probabilities that she remains a fit and proper person to hold a licence even though she does not meet the Council's licensing standards. Mrs King has failed to do so. She has put forward no grounds which would justify a departure from policy other than to try and maintain her innocence of the offence, something she legally cannot do in the face of her conviction. Rather there are aggravating features. She failed to tell the Council of her conviction within 7 days as required by the conditions attached to her licence. She only told the Council of this matter when advised to do so by East Cambridgeshire District Council when it discovered her conviction as a result of a DBS check it had made. The unavoidable inference the committee draws is that had she not applied to East Cambridgeshire for a driver's licence she would not have told this Council of the conviction and we would not have known of it until 2015 when her DBS is due for renewal here. Further, although on its own it would not justify a sanction, the committee take a dim view of the circumstances of Mrs King's speeding conviction. 46 mph in a 30 limit is grossly excessive and even on the basis that Mrs King thought she was entering a 40 mph zone she would have been exceeding the speed limit by 6 mph.

The decision of the committee is to revoke Mrs King's combined licence under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause namely that as a result of her conviction Mrs King does not meet the licensing standards of the Council. The committee is not satisfied that she is a fit and proper person to hold a licence and there are no grounds which would justify a departure from the Council's policy.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10.30am on 14 JUNE 2013**

Present: Councillor J Salmon – Chairman for the meeting.
Councillors E Hicks, J Loughlin and A Walters.

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

Also present: Mrs Meecham, the operator.

LIC3 **WELCOME**

The Chairman welcomed all those present and introduced members of the committee and officers.

LIC4 **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE**

The committee considered a report requiring it to determine whether to suspend or revoke a private hire operator's licence in accordance with section 62(1)(a) Local Government (Miscellaneous Provisions) Act 1976.

Mrs Meecham confirmed she had received a copy of the report.

The Enforcement Officer outlined the sequence of events as described in the report. Mrs Meecham was the licensed private hire operator for Hallingbury Travel. On 13 January 2013 Mrs Meecham's husband had driven a vehicle licensed by the Council on his way to collect a passenger due to be collected by Hallingbury Travel. The police had stopped him and ascertained that the vehicle was being used for private hire and that Mr Meecham did not hold a private hire driver's licence. Mr Meecham had explained that he had been driving the vehicle as a favour to his wife, who was not well. Mrs Meecham had then collected the passenger instead. Under section 46(1)(e)(ii) Local Government (Miscellaneous Provisions) Act 1976 it was an offence to operate a private hire vehicle with an unlicensed driver. Mrs Meecham therefore appeared to have committed an offence under Part II of the Act, giving rise to grounds for suspension or revocation of her licence. Officers had invited Mrs Meecham to attend an Interview Under Caution in February 2013 but she had requested that it be postponed until a date after 9 March 2013. The Enforcement Officer had emailed Mrs Meecham to ask her reasons for wishing to delay the IUC, but had received no reply. The Council had taken proceedings against Mr Meecham for the offence of driving a private hire vehicle without a private hire vehicle driver's licence. On Tuesday 28 May 2013 the case against Mr Meecham was proved in his absence and he was fined £200 and ordered to pay costs of £300 and a victim surcharge of £20.

The Chairman invited Mrs Meecham to question the report. Mrs Meecham said she had no questions. She said on the date in question she was ill and her husband had said he would do the pick up as he believed the insurance for the vehicle permitted social domestic and pleasure use. She had on the Monday telephoned the Council's Licensing Officer to report what had happened. She said her husband never drove the vehicle except on that occasion and he only did it because she was ill.

Councillor Loughlin expressed concern that the background papers did not include correspondence from the Council regarding the re-arranging of the Interview Under Caution.

The Assistant Chief Executive-Legal said the production of the Council's correspondence with Mrs Meecham was irrelevant as the purpose of the interview was to establish whether an offence had been committed and whether Mrs Meecham was a fit and proper person to hold an operator's licence.

Councillor Hicks asked whether there were any circumstances in which a licensed vehicle could be driven by a non-licensed driver.

The Assistant Chief Executive-Legal confirmed that a private hire vehicle could not be driven by someone who was an unlicensed driver, even if the insurance policy named a person who was not a licensed driver. The insurance policy relevant to the vehicle listed 5 people including Mr Meecham as named drivers, who could drive for social, domestic and private hire purposes. As a matter of insurance law, the journey made by Mr Meecham to the Airport was covered by the insurance as the vehicle was not carrying a passenger and was being used for the private hire business. However the carrying of passengers was not permitted under the insurance where the driver did not hold a valid private hire driver's licence. If Mr Meecham had not been prevented by the police from picking up the passenger, Mr Meecham would have been guilty of the offence of driving without insurance as well as driving without a licence.

Mrs Meecham then made a statement. She said her husband had never used the vehicle before or since. The reason he was on the policy was that he had been on a policy transferred from one vehicle to another. He was now excluded from the policy. She said she did not receive the email sent to her regarding the request to explain her reasons for wishing to arrange the IUC. On 28 March she received a number of emails all at once. She had written "second letter" on her letter to the Council because she had not heard from them. She had received no response to her letter. She had asked for another appointment. She had never had any trouble before and believed she had been a good operator. She felt she was facing more of a punishment than those whose cases had been in the local newspapers for having unlicensed vehicles or being unlicensed operators.

The Assistant Chief Executive Legal explained the distinction between the cases Mrs Meecham had referred to and her own circumstances. This

Committee dealt with cases of suspension and revocation, whereas the Court dealt with criminal offences.

Mrs Meecham said she had made one mistake, but that she was fit and proper and that she was an employer.

In reply to questions from Councillor Hicks, Mrs Meecham said she had received the conditions attached to her operator's licence and that she had read them thoroughly. In allowing her husband to drive the vehicle, Mrs Meecham said she believed he was permitted to drive under the insurance for social domestic and pleasure use. She said the insurance document should not state that drivers were covered if they were not permitted to drive.

In reply to a comment regarding exclusion on the insurance policy of driving hackney carriages, the Assistant Chief Executive-Legal explained that this exclusion did not apply to private hire vehicles.

In reply to questions from Councillor Loughlin, Mrs Meecham said she had had an email from the insurance company to the effect that Mr Meecham's name should not be on the certificate for this vehicle.

In reply to a question from Councillor Hicks, the Enforcement Officer said inspection of the records of Mrs Meecham had not been carried out.

The Assistant Chief Executive-Legal said the conditions in the agenda papers were the current conditions of licence. Under the old conditions which applied at the time the incident took place, it was a condition that only licensed drivers could drive licensed vehicles.

It was for the Committee to consider whether to suspend or revoke the licence. Suspension was a punishment and revocation was applicable where a person was not considered fit and proper to hold a licence. The reason Mrs Meecham was not prosecuted for an offence was that there was no evidence at the time of prosecution of Mr Meecham that he was driving at her request or with her consent. Mr Meecham did not attend court and gave no reason for not attending so he was convicted. Today Mrs Meecham had said quite clearly that her husband was driving with her consent so if she had been prosecuted a conviction would have followed. If the Committee found her fit and proper it was reasonable to allow the business to continue. Suspension of an operator was not usually considered as this impacted on the drivers employed by the operator. However in this case the business was a "meet and greet" transfer service. Suspension of the licence would cause inconvenience and have a financial consequence but it would not have the same effect as suspending a conventional operator. The offence was one of allowing a licensed vehicle to be driven by a driver who did not hold a driver's licence. The Council had no knowledge of Mr Meecham, he had no CRB check, the Council had no way of knowing if he was a fit and proper person, and no explanation had been given as to why the other licensed driver of the business or another operator could not have picked up the passenger.

The Committee withdrew at 11.05am to determine the licence. During the discussion period, Councillor Hicks was obliged to depart for another commitment, whereupon Councillors Salmon, Loughlin and Walters agreed the Committee's decision.

At 12.35pm the Committee gave its decision, although Mrs Meecham had departed by that time.

Decision

Mrs Meecham has held a private hire operator's licence from this council since 2010. On the grant of her first licence and on each renewal she was given a copy of her conditions of licence. Her last licence was granted with effect from 1 September 2012. Included in the conditions at that time (and on the previous grants) was a condition that "The operator shall not employ or otherwise engage whether directly or indirectly any driver to drive any private hire vehicle for which the operator invites or accepts bookings unless the driver has been granted the appropriate licence by the District Council." Mrs Meecham signed an acknowledgement of receipt of the conditions and agreed to observe them. This condition no longer appears as a condition of the licence as operating a vehicle with an unlicensed driver is an offence under the Local Government (Miscellaneous Provisions) Act 1976 and the council no longer considers it appropriate to include conditions which replicate the requirements of statute. It expects licence holders to know the law which relates to the business they operate. However that condition existed at the relevant time. Both because of the conditions of licence and the legislation Mrs Meecham knew or ought to have known that only a licensed driver is allowed to drive a licensed vehicle.

On 13 January 2013 Mrs Meecham's husband was approached by a police officer driving a licensed private hire vehicle registered to Mrs Meecham as he arrived at Stansted Airport to collect a passenger. Mr Meecham did not hold a private hire driver's licence. As such he was not authorised to drive the vehicle. The police officer ascertained that the insurance on the vehicle which was in Mr Meecham's name would not cover an unlicensed driver using the vehicle as a private hire vehicle. He therefore refused to let Mr Meecham take the passengers. Mrs Meecham was called and attended in another vehicle to collect the passengers and Mr Meecham drove back in that car.

Following the report of this incident Mr and Mrs Meecham were invited to attend an interview under caution at the Council Offices. There is a lack of complete clarity over the circumstances surrounding this although it appears that at least 2 letters were sent by the council as a letter of 11 February 2013 from Mrs Meecham refers to letters she had received. The committee also draw an inference that Mr and Mrs Meecham were asked to attend an interview on 28 February as in her letter Mrs Meecham refers to a telephone conversation in which she said she would let Mr Chamberlain know "if the 28 February 2013 was convenient". The letter went on to say that due to work commitments Mr and Mrs Meecham could not attend on that date and asked for a new date after 9 March. Mr Chamberlain says that an e-mail was sent to

Mr and Mrs Meecham asking why they could not attend on 28 February which was not replied to. Mrs Meecham denies having received that e-mail. As a result of no response to that e-mail having been received a decision was made to prosecute Mr Meecham for the offence of driving a licensed vehicle without a licence. Mrs Meecham was not prosecuted as the council had no evidence that Mr Meecham was driving on her behalf or with her consent. Mr Meecham failed to attend court when the case was proved in his absence and he was fined £200 and ordered to pay costs of £300 and a £20 victim surcharge.

Whether or not Mr and Mrs Meecham received the e-mail from the council asking why they could not attend the interview on 28 February the committee draw an inference that they failed to co-operate fully with enforcement officers investigating what was a serious allegation. The letter inviting them in on that date must have been received no later than the date of Mrs Meecham's letter dated 11 February which was 17 days before the appointment offered. In response to the invitation Mrs Meecham telephoned the council and at that stage did not know whether the 28th would be convenient or not. The committee find this strange as presumably Mrs Meecham would have checked her diary before making the telephone call and could have re-arranged the appointment on the telephone at the time if 28 February was genuinely inconvenient. Her letter of 11 February does not offer any explanation as to why 28 February was inconvenient other than "work commitments" nor any explanation as to why an appointment before 9 March would not be suitable. The committee regard such a failure to co-operate as a serious matter.

Turning now to the circumstances of Mr Meecham's offence, Mrs Meecham said that she was due to collect some regular customers from the airport. She was feeling unwell and her husband offered to collect them on her behalf. She said that they thought it would be OK as he was driving for social, domestic and pleasure purposes under the policy for the vehicle.

The committee do not accept this explanation. Mr Meecham was clearly not driving for social domestic and pleasure purposes but was collecting customers of the parties' business from the airport. The insurance covers driving for hire and reward under the terms of a private hire licence. Mrs Meecham knew her husband had no such licence. The insurance was not therefore valid for him to carry passengers. Mrs Meecham knew or should have known this. The fact is that the offence of using a vehicle without insurance was only avoided by the intervention of the police.

Although Mrs Meecham has not been prosecuted for the offence of operating a private hire vehicle with an unlicensed driver on what the committee has heard today it is satisfied that the offence has been committed. It is a ground to revoke or suspend a licence that an operator has committed an offence under the Act. Unlike driver's licences a conviction is not necessary. The committee may also suspend or revoke a licence for any other reasonable cause.

Where an operator is no longer considered to be a fit and proper person the only realistic option for the committee is to revoke the licence as it is highly unlikely that a suspension would render the operator a fit and proper person once the suspension had expired. In this case the committee are prepared to accept that Mr Meecham drove the vehicle in unusual circumstances because Mrs Meecham was ill. In the absence of evidence of repeated breaches of the legislation and the fact that there have been no issues relating to Mrs Meecham as an operator since the first grant of her licence in 2010 the committee is satisfied that she remains a proper person and it is not therefore necessary for her licence to be revoked.

However the committee do take a very dim view of the commission of this offence. It has always been the policy of the council that sanctions should be imposed where there has been a breach of condition or the legislation and that approach was embodied in the council's policy adopted in March this year. Had Mrs Meecham been prosecuted it would not have been necessary to impose any further sanction but as she has escaped prosecution the committee consider that a sanction is necessary to serve as a deterrent both to Mrs Meecham and others. In that respect Mr Meecham's conviction is a completely separate issue as had sufficient evidence of an offence by Mrs Meecham been available both would have been prosecuted. Although the council's policy says that a suspension will rarely be appropriate for operators that is in the context of a standard private hire business where a suspension could cause a considerable loss of income and also impact upon innocent third parties, namely the drivers, who would be unlikely to have work during the period of suspension. Mrs Meecham does not operate a conventional private hire business however. She runs a park and ride operation which is her main business and the private hire operation is very much ancillary to that. Whilst there will undoubtedly be some financial loss arising from a suspension as she will need to arrange for other operators to undertake the journeys to and from the airport it will not be as great as the impact upon a conventional private hire business. The council's policy does not indicate what length suspension would be appropriate for operators but the starting point for drivers is 5 days. In this case the committee consider that 4 days would be appropriate and the licence will be suspended under s.62 (1) (a) and (d) for that length of time.

The committee stress to Mrs Meecham the importance of her being aware of and observing the council's conditions of licence and the legislation. If she is unable to fulfil any bookings in future she must not permit an unlicensed driver to do so on her behalf but must make arrangements for a driver licensed by this council to carry out the booking for her. Should Mrs Meecham be found to have used an unlicensed driver on a future occasion there is a very real probability that her licence would be revoked.

The meeting ended at 12.45pm.