

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 26
SEPTEMBER 2013**

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

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

Also present: Mr N Munro, Mr B Drinkwater, (Uttlesford Licensed Operators and Drivers Association), Mr Southey, Mr Ashman - Carriages, Mr Cooper – Essex Limos Ltd, the drivers in relation to the items considered in part 2 .

LIC18

DETERMINATION OF A VEHICLE LICENCE

The Assistant Chief Executive-Legal first explained the options open to Mr Munro for how to proceed in view of the fact that he had applied both for an exception to the council's licensing policy and for a variation to it.

The Assistant Chief Executive-Legal said today the committee was sitting as a panel, but a decision on varying the policy would require consideration by the whole committee and would be considered on 16 October. If the committee today found against the application to make an exception to the policy, that decision would not prejudice the decision to be taken on 16 October. If the application to vary the policy was subsequently granted, Mr Munro would have to re-apply. Therefore to avoid incurring another fee he could if he wished defer today's application for an exception until after the next meeting.

Mr Munro opted to have his application for an exception to the policy to be determined today. He confirmed he had received the report.

Members considered the report. Mr Munro had requested the council to license his 1999 Bentley Arnage as a private hire vehicle. As the Bentley was over 12 years old the current licensing policy prevented the issue of such a licence. Mr Munro had acquired the vehicle in order to provide transport for weddings, such use being permitted without licence by Section 75(1)(cc) of the Local Government (Miscellaneous Provisions) Act 1976. He now wished to extend the use of the vehicle to cover other events such as school proms and corporate work, which would require the vehicle to be licensed.

The Chairman invited Mr Munro to comment on the report.

Mr Munro said he wished to use the car to transport people both to and from corporate and wedding events, for example to take the bride and groom to their hotel or airport, and not just to and from the wedding service to the reception venue.

Members considered the sections of the licensing standards referred to in the report.

Mr Munro made a statement. He said the Bentley was not intended to be used for routine trips but for exclusive events such as corporate events such as taking people to Ascot, or for weddings taking the bride and groom to their hotel or airport after the wedding or to take them from a hotel to the airport the day after the wedding and to collect them from the airport on their return, or for school proms, where there was a niche for those wishing to have a distinctive luxury car for proms. He said the Bentley would be doing limited mileage, probably only a couple of hours' driving per week. The car was fully maintained and in Mr Munro's view was in better condition than many newer vehicles.

The Chairman asked how competitive Mr Munro's service was and asked about the distances involved in taking people to famous sporting events of the exclusive kind Mr Munro had mentioned.

Mr Munro said comparative costs per mile across the nation ranged from £3 per mile to £7 per mile, and he aimed to charge £3.50 per mile for longer distances. For weddings he would provide a set price for a minimum of 3 hours. He did not intend to take people to all kinds of routine sporting events such as "the dogs", but to exclusive ones such as Ascot. He did not intend to travel great distances as he had a young family.

The Assistant Chief Executive-Legal said in relation to wedding bookings, it was correct that Mr Munro needed to apply for a licence for trips such as taking the couple to the airport the day after the wedding or collecting them from their airport after their honeymoon, as the wedding exemption would not cover these trips. The licensing policy stated that the committee would only depart from policy in exceptional circumstances, and stated that applicants who wished to licence a vehicle which did not meet the licensing standards would normally be encouraged to apply for standards to be amended. The committee had laid down a standard for vehicles and it was difficult to see how it could vary the standard for a particular vehicle in a particular case. The committee had previously amended the standards to include classic vehicles (although these were no longer covered) and Smart cars. A change in policy applied to all vehicles not a particular vehicle.

The Assistant Chief Executive-Legal said whilst he was not aware of any other Bentleys or Rolls Royce vehicles operating in the district, there were a number of high-end vehicles operating in the district, and Mr Munro's Bentley was considerably older than these.

The Chairman asked for clarification where if the day after a wedding, the bride and groom were taken to an airport. The Assistant Chief Executive-Legal confirmed this trip would be outside the wedding exemption.

Mr Munro asked if a journey made after midnight to transport the bride and groom somewhere was outside the wedding contract. The Assistant Chief

Executive-Legal said such a trip would be included, as would the conveying of wedding guests from a reception to for example a station, provided all such trips were in connection with the wedding. However if the couple wanted to get transport the next day after staying overnight this would not be included.

The committee withdrew at 10.20am to determine the vehicle licence and returned at 10.50am.

DECISION

The committee has today considered an application for the grant of a private hire vehicle licence to Mr Munro in respect of his Bentley Arnage which was registered in 1999. By virtue of its age this vehicle does not meet the council's licensing standards which provides that the council will not licence vehicles which are more than 12 years old unless the vehicle is wheelchair accessible or used solely for school contracts.

Mr Munro has explained that his vehicle is currently used in connection with weddings using an exemption under the Local Government (Miscellaneous Provisions) Act 1976 which permits unlicensed vehicles to undertake such work. However he wishes to extend the use of the vehicle to enable him to take bookings for high class sporting and corporate events.

Although all licensing applications have to be treated on their individual merits it is more difficult to find grounds for departing from policy with regard to vehicle standards than it is in the case of individuals. The test for the latter is whether they are fit and proper persons. An individual may be able to satisfy the committee that he or she is fit and proper notwithstanding the fact that they do not meet the council's licensing standards. Conversely vehicle standards are more absolute in nature which is why the council policy states that applicants who wish to licence vehicles which do not conform to the licensing standards should be encouraged to suggest that the standards should be varied rather than to seek an exception to policy. Indeed Mr Munro has made such an application which is to be considered by the full committee on 16 October. The committee has in the past shown willingness to amend the licensing standards in certain circumstances as referred to in the policy. Allowing an exception to policy can have undesirable effects. It can undermine the policy as a whole and creates a precedent which may encourage others with non-compliant vehicles to seek exceptions. The committee are not satisfied today that Mr Munro has made out a case for departing from policy in his case. It therefore refuses the application today. This decision does not in any way pre-determine the view which may be taken by members with regard to the application to vary policy which will be considered on its merits on 16 October at which meeting members will determine whether to relax age limits in respect of certain vehicles, if so what types or vehicles or business should the variation of policy extend to and what conditions (if any) may be appropriate in the light of any variation of policy which may be agreed.

The Assistant Chief Executive-Legal said he would defer sending the notice of decision to Mr Munro so that the expiry of the 21 day appeal period would allow time to know the decision of the committee on the application to vary the policy on 16 October. Mr Munro would then be able to assess whether or not to make an application and pay the application fee if the committee decided to vary the policy.

LIC19

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

The committee considered a report on a breach of condition attached to a private hire driver's licence. Mr Southey was present, represented by Mr Barry Drinkwater of ULODA and accompanied also by James Ashman of Carriages, his employer.

Members considered the report which set out the facts regarding three motoring convictions of which Mr Southey had failed to notify the council within the 7 days specified as a condition of his licence.

The report set out the nature and dates of the motoring convictions that Mr Southey had received. At the time his licence was granted in 2008 Mr Southey's DVLA Driver's Licence had disclosed three motoring convictions all of which had expired. Mr Southey had on 7 June 2010 received a Fixed Penalty Notice, but in breach of the conditions of his licence he did not report the conviction to the council until he applied to renew his licence on 13 January 2011. Under delegated powers the Assistant Chief Executive-Legal had suspended Mr Southey's licence for two days. On 19 February 2011 (during the time within which he could have appealed against that suspension) Mr Southey again received a Fixed Penalty Notice for excess speed. He did not notify the council of that matter until 24 January 2012, almost one year after the incident. In mitigation at the time he stated that there was some confusion as to whether he could attend a speed awareness course but had missed the cut-off date to accept that offer and had to take the points on his licence. He stated that it was due to absent-mindedness he forgot to inform the council. The Assistant Chief Executive-Legal had on 2 February 2012 exercised delegated powers to suspend Mr Southey for five days for the breach of condition on his licence with regard to this matter.

On 16 July 2013 Mr Southey received a further Fixed Penalty Notice for excess speed. He did not notify the council of this until 6 August. On that date he emailed the council stating that he was giving notice of impending speeding points being added to his licence saying that he was sending his licence and payment on that day. The Licensing Department asked Mr Southey to specify the date upon which the Fixed Penalty Notice was issued and was informed it was issued on 16 July. In mitigation, Mr Southey had said that he believed that the date of conviction was the date the penalty points were endorsed on the licence and not the date the Fixed Penalty Notice was issued. However, the council's conditions of licence were quite clear that Fixed Penalty Notices must be notified to the council within seven days of the issue of the notice.

In accordance with the council's Licensing Policy where there had been two breaches of condition within a three year period any further breach should be dealt with by the committee. The driver fell just outside this requirement as the first breach of condition had occurred more than three years ago in June 2010. However as he had had three Fixed Penalty Notices in just over three years and had not notified the council of any of these as required by the conditions of the licence, the Assistant Chief Executive-Legal had referred the matter to the committee for determination.

Mr Drinkwater then made a statement on behalf of Mr Southey. He said in mitigation that Mr Southey was an excellent driver, and in relation to one of the failures to notify the council Mr Southey had provided mitigation in that there had been some confusion over whether he would attend a speed awareness course rather than accept points. Mr Southey said he had given notice of impending points to Mr Hardy the Licensing Officer by email on 6 August, and he understood that his conditions allowed him to decide whether to accept points or go to court. He had thought he was complying with the conditions of licence. He thought he had 21 days, although he now accepted that the time was 7 days. He was very sorry and had learned his lesson. He had had help from his trade association and the HR department of his employer.

Mr Ashman of Carriages provided Members with a character reference supporting Mr Southey from Jan Pegram, who as the Managing Director of Carriages was very concerned. The reference stated that Mr Southey was very professional, very punctual and had received many positive customer comments. He had been with the company for 13 years and had never had one complaint. Other than an instance where someone had shunted into him, he had been involved in no accidents. He had had a couple of speeding offences, one of which was for driving at 79 mph on Royston Road, another was for driving at 59 mph on the M25 in a 50mph average speed limit.

Mr Ashman said Mr Southey had an exemplary record with the company and his employers could not commend him highly enough. His record-keeping was perhaps his weak point, but this aspect had improved dramatically. He had had a lot on his mind as he had recently got married.

Mr Drinkwater confirmed that Mr Southey had received the report. The Chairman asked about the date when Mr Southey had started driving for Carriages, which in the report was stated to have been 2008, but in the reference letter supplied was given as 2000. Mr Drinkwater said this discrepancy arose from a technicality that had been explored in a previous case, whereby the licensing regime had replaced a previous exception regarding chauffeur driven hire.

The Chairman said members needed reassurance that Mr Southey would break the pattern of speeding.

Mr Southey said he had thought he would not be here a third time, he thought he was giving the Council plenty of notice and did not want to come back a fourth time.

The meeting was adjourned at 11.20am for five minutes to allow the Assistant Chief Executive-Legal to research the exemption from the Licensing Act which had been referred to. He returned with confirmation that Carriages had been able to rely upon such an exemption prior to 2008, and as records from that time would not have had to be kept, no further action on this point could be taken.

Mr Drinkwater said Mr Southey had provided a good character reference, and he hoped the committee would be lenient. A short suspension would be more appropriate than revocation.

The Assistant Chief Executive-Legal asked about Mr Southey's financial situation.

Mr Southey assessed his daily income at £70 gross, six days a week from Monday to Saturday with no unusual outgoings.

The committee withdrew at 11.30am and at 12.25 returned to give its decision.

DECISION

Mr Southey has been licensed as a private hire driver by this council since 2008. On 7 June 2010 he received a fixed penalty notice for excess speed. Under the conditions of his licence he should have notified the council of this within 7 days of receipt of the notice. He did not do so. The first time the council became aware of the notice was when Mr Southey applied to renew his licence in January 2011. As a result of the breach of condition Mr Southey was interviewed by the Assistant Chief Executive – Legal, Mr Perry, who suspended his licence for two days under delegated powers.

Where a licence is suspended there is a period of 21 days within which a driver can appeal against that suspension. During that period from the date Mr Perry suspended the licence Mr Southey received a further fixed penalty notice for excess speed. Again he failed to notify the council of receipt of this notice and the first the council learnt of it was when he applied to renew his licence in January 2012. Mr Perry interviewed Mr Southey who said that there was some confusion as to whether he could avoid the points by attending a speed awareness course but that he missed the date and had to accept the fixed penalty. Thereafter he forgot to inform the council due to absentmindedness. That explanation was not acceptable to Mr Perry given the proximity of the fixed penalty notice to the previous suspension. The explanation is also not acceptable to the committee for the same reason. On that occasion Mr Perry suspended Mr Southey's licence for 5 days.

One may have assumed that having been suspended on two occasions for the same breach of condition that Mr Southey would have read the conditions of his licence with some care and ensured that he understood them. Unfortunately it seems that he did not do so. He committed another speeding offence in May this year. Mr Southey's operator has produced the notice it received from the police at that time requiring the operator to identify the driver. Ultimately Mr Southey was issued with a fixed penalty notice for this offence. No evidence of the date of the notice has been provided but Mr Southey has informed the council that he received it on 16 July. That being the case the council should have been informed of the receipt of the notice no later than 23 July. However the first time Mr Southey contacted the council with regard to the issue was when he e-mailed the council on 6 August. In mitigation Mr Southey said that he did not realise the 7 days to notify the council of a fixed penalty notice ran from the date it was issued. However the conditions of licence are crystal clear in this respect and had Mr Southey read them as one might have supposed he would have done in the light of his previous experience he would have understood that.

The council's licensing policy provides that where a driver commits three breaches of condition within a three year period on the third occasion he should be referred to the Licensing Committee. The inference from this provision is that a driver who persistently breaches conditions cannot be considered a fit and proper person to hold a driver's licence and the licence should therefore be revoked. Mr Southey just misses out on the policy requirement for his case to be brought before the committee as his first breach of condition was three years and one month before the last. However as the three breaches were in respect of the same condition and were over only just over three years Mr Perry declined to impose a sanction under delegated powers and referred the matter to the committee to consider whether it considered that Mr Southey's licence should be revoked or whether a suspension may be an appropriate sanction.

The view of the committee is that Mr Southey will have learnt by this experience and that revocation of his licence on this occasion is not necessary. However he should be in no doubt today that he is visiting the Last Chance Saloon and that if there were to be a further breach of condition a revocation of his licence would almost certainly follow.

The council's policy is that where there is a breach of a condition there should normally be a sanction imposed. A sanction should fulfil two functions. It should be punitive to mark the Council's disapproval of the conduct of the licence holder. It should also be a deterrent to the licence holder and others in the trade to prevent such conduct being repeated. The starting point for a suspension for a first breach is five days. That clearly therefore is not appropriate as a sanction in the case of Mr Southey as this is his third breach in little more than three years. Further it would not be appropriate as a deterrent to Mr Southey as he has been suspended twice, on the second occasion for five days and that did not have the effect of securing strict compliance with the conditions of his licence.

The committee has heard brief details of Mr Southey's financial position. He earns on average £70 per day and works a six day week. He has the usual outgoings only in terms of mortgage, council tax etc. A sanction must be proportionate in the circumstances of the case. Taking into account Mr Southey's financial circumstances, his previous record with the council and giving credit for the fact that Mr Southey did at least volunteer the information to the council before he renewed his licence on this occasion (although the notification was late) the committee are of the view that a 14 day suspension is an appropriate and proportionate response to Mr Southey's breach of condition.

The decision of the committee is that Mr Southey's licence should be suspended under s.61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976 for a period of 14 days for any other reasonable cause namely a breach of a condition attached to his licence.

The Assistant Chief Executive-Legal explained to Mr Southey his right of appeal.

LIC20

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.

LIC21

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

The Assistant Chief Executive-Legal said the driver had asked to leave soon for childcare reasons. The Assistant Chief Executive-Legal said the Committee would have been able to deal with the item in the morning but the Driver had not been present then. His options therefore were to have this item dealt with now or to have it adjourned. If adjourned, the council would notify the driver of a date.

The Driver elected to have the matter adjourned.

LIC22

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

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

The Enforcement Officer presented the report, and drew attention to the application for a joint private hire/hackney carriage driver's licence which the driver had completed on 15 July 2013. The driver had listed on the form three offences of speeding but had disclosed no other offences on the form. The Disclosure and Barring Services for the driver had subsequently been received, which disclosed a conviction on 19 October 1992 for three offences

under the Social Security Act 1986. Making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976. The Assistant Chief Executive-Legal had considered the public interest did not require a prosecution, but in the light of the false statement made he had referred the applicant to the Committee for determination.

On 9 August 2013 enforcement officers had carried out an interview under caution with the driver who claimed that when he filled in the application form for the licence he forgot about his conviction in 1992 as it was so long ago. When questioned over the nature of the offences the driver explained that he and his partner were claiming Income Support but that he was working cash in hand at the same time and not declaring it. The driver stated that he had now paid back the fine. The driver admitted the offence of making a false statement to obtain a licence.

The driver made a statement. He said he had forgotten about the social security offence. He had paid the fine and thought that was the end of it.

The Chairman asked how the offences under the “totting up” rules had come about.

The driver said there had been four offences. These were mainly speeding offences and that he had received 12 points so had lost his licence for six months.

The Assistant Chief Executive-Legal said the driver met the council’s licensing standards, there was nothing to indicate on the driving licence that he was not a fit and proper person; the convictions should not be taken into account. The committee simply had to consider whether the driver was a fit and proper person in view of his failure to declare the conviction for an offence under the Social Security Act 1986. If members accepted he had forgotten the conviction then they would have to grant the licence.

At 12.45pm members withdrew and at 12.55pm returned to give their decision.

DECISION

The committee granted the licence. The Chairman asked the driver to ensure that in future he read the forms and included everything he should.

LIC23

DETERMINATION OF A PRIVATE HIRE OPERATOR’S LICENCE

The public part of the meeting resumed.

Mr Andy Cooper, Managing Director of Essex Limos Limited, confirmed he had received the report.

Members considered the report. The report referred to an incident when a stretch limousine registered with Uttlesford District Council had been stopped by Essex police on 28 June 2013. The driver Stephen Chambers had just dropped off eight students to a summer prom. Mr Chambers was asked to produce a driver's licence badge but could not do so, as he did not have a licence and said he was unaware of the fact he needed one. Mr Chambers told the police that he had been asked to drive the vehicle at short notice.

Following this incident, enforcement officers visited on 9 July 2013 the address given as the registered office of Essex Limos Ltd in Uttlesford, 10 Bury Fields, Felsted in order to inspect the records of private hire bookings. However, there was no reply at the house nor were there any licensed vehicles at that site. The enforcement officers then visited the company's address as stated on its website, that is, Unit 8, Broadfield Farm, Dunmow Road, Rayne, Essex CM77 6SA. At this address Essex Limos had a portacabin with their licensed vehicles parked up including private hire vehicle 572 which was the one stopped by the police. Records of private hire bookings were kept on the computers at this address, and officers spoke to a director of the company who informed them that the business was trying to find suitable premises in Uttlesford but so far had not managed to do so, as they required a big enough site to hold the vehicles.

Officers had then made enquiries regarding licences for Essex Limos held by Braintree District Council. Confirmation was received that the company had four drivers and seven vehicles licensed with Braintree District Council, one of the vehicles being private hire vehicle 572. The Enforcement Officer said when he saw this vehicle it was displaying only the Uttlesford plate.

Mr Cooper had attended an interview under caution on 14 August 2013. At that interview he had confirmed that Essex Limos Ltd had two operating addresses in Rayne and in Felsted. Regarding the use of an unlicensed driver, he said the driver who had originally been booked, Mr Collins, had pulled out shortly beforehand, so Mr Cooper having tried with no success to find another Uttlesford driver to take the booking, had taken the decision to assign the job to the unlicensed driver Mr Chambers. He accepted that this was wrong but said he felt he had no option as Mr Collins had withdrawn so soon before the job started and that as Mr Chambers was a pilot he had more DBS checks than licensed drivers.

The Enforcement Officer said the company was being prosecuted for the offence of operating a private hire vehicle with an unlicensed driver, which meant it now fell below the licensing standards of the Council. He provided Members with copies of several pages from the website for Essex Limos Limited. These pages gave as contact details for the company the address and telephone number in the Braintree licensing district.

The Chairman invited Mr Cooper to comment on the report.

Mr Cooper said the details reported by Braintree's licensing department were incorrect in that he had five licensed drivers with Braintree. He questioned the

accuracy of that email and said he did not wish those factual errors to count against him.

The Enforcement Officer said Essex Limos did hold an operator's licence and driver and vehicle licences with Braintree.

The Chairman asked about the address which was given as the company's business address. Mr Cooper said the address stated on the application for the operator's licence was 10 Bury Fields, Felsted and that the telephone number given was a mobile telephone number. Mr Cooper confirmed that he recalled completing the form which was dated 18 December 2012, and that it was his signature on the form.

Mr Cooper then made a statement.

He said there was a misunderstanding regarding the base from which Essex Limos Ltd operated. The company was operating the two Uttlesford vehicles from 10 Bury Fields; the business had been registered also since 2008 with Braintree council. The majority of their servicing work took place at Rayne. He had not realised they were not allowed to move vehicles from Bury Field to Rayne for valeting. The fact that the vehicles were not there on the day the officers visited was not unusual, as they could have been out working or being valeted. Regarding bookings if he had been at the Bury Field site that day he could have shown officers the bookings which were cloud based so could be accessed from anywhere. It had been solely his decision to ask Mr Chambers to carry out the job. He knew it was wrong but felt there were mitigating circumstances in that he wished not to let down the children expecting the limo to take them to their prom. The company had an unblemished record with Braintree; he understood the severity of this incident and would not do it again. Mr Chambers was a fully qualified pilot and he had felt it was the right decision at the time. Since then he had implemented a new scheme whereby he paid a spare driver to be on call so as to avoid this situation happening again.

The Chairman asked whether Mr Chambers was licensed as a driver by any authority. Mr Cooper said he was not.

The Assistant Chief Executive-Legal asked Mr Cooper the following questions: where Essex Limos Ltd were operating from, as the website gave only the address at Rayne and not the address in Uttlesford; what was his understanding of the term "operate"; and where the company publicised its telephone number for its Uttlesford base.

In reply to these questions, Mr Cooper said he could change the information on the website immediately and it was only recently that the company became licensed in Uttlesford; that operating meant preparing the vehicles, making sure drivers were licensed and fulfilling the contract with the client; there was a mobile telephone number on the website.

Members noted that the printed pages from the website produced to the meeting contained only Braintree numbers. Mr Cooper said not all the pages from the website had been printed off.

In reply to a question as to where the mobile telephone was kept, Mr Cooper said he kept it with him.

In reply to a question as to where he was usually based, Mr Cooper said he was usually based at 10 Bury Fields, which was owned by the other director.

The Assistant Chief Executive-Legal asked why Mr Cooper said the business was based at 10 Bury Fields when it seemed the main base was at Rayne.

Mr Cooper said there was no reason for him to be at that base all the time.

The Enforcement Officer said Mr Cooper had spoken to the Licensing Officer Mr Hardy regarding the stopping of the limousine by the police, and that Mr Hardy had informed Mr Cooper that as a consequence the company fell below Uttlesford's licensing standards. Regarding the offices at Rayne, the Enforcement Officer said on inspection the other director Mr Shepherd and two other members of staff were present, and there had been evidence of telephone lines in use. Mr Shepherd owned 10 Bury Fields.

The Assistant Chief Executive-Legal said operating a private hire vehicle meant making provision for accepting bookings for hire. The only numbers stated for the company in its publicity were in Braintree or Chelmsford, so there was no evidence to suggest that the company was making provision for bookings in the Uttlesford area. Regarding the instance of the private hire vehicle having been stopped by the police, it seemed that the police allowed him to proceed with his journey on the basis that the car was empty. It was likely there was no cover for the unlicensed driver when carrying passengers.

Regarding the use of a pilot as a driver on the basis that Mr Cooper considered he would have had more CRB checks than a driver, enhanced DBS checks were only available for those who came into regular contact with children. This was not the case for a pilot.

At 1.20pm the committee withdrew to determine the matter. At 2.30pm the committee returned to give its decision.

The Chairman thanked the Enforcement Officer for an excellent report and presentation.

The Assistant Chief Executive-Legal said Mr Cooper had said in evidence that there were more pages on the website than the pages which had been produced to the committee. He had now checked all pages of the website for Essex Limos Ltd, of which there were 28. All pages were headed up with the Rayne telephone number and at the foot of each page was the Rayne address, telephone number and fax number plus a Chelmsford number.

DECISION

Essex Limos Limited are licensed as private hire operators by Uttlesford District Council. The company has held that licence since February this year. The address given to the council as the address within the district from which the company operates is 10 Bury Fields Felsted. The company operates stretch limousines. The company is also licensed by Braintree District Council and has a base within that district at Rayne.

On 28 June 2013 a private hire vehicle registration S661 RLS was stopped by a police officer in the vicinity of Parklands Hotel, Quendon. The vehicle was a Lincoln Town stretched limousine licensed by this council having plate number 572. The driver was a Mr Stephen Chambers. He was not wearing a private hire driver's badge and on being interviewed by the police he admitted that he did not hold a private hire driver's licence. Mr Chambers stated that he had just dropped off a party of 8 pupils at Saffron Walden County High School for their school prom. The committee understands that Mr Chambers is being prosecuted by the police for the offence of driving a private hire vehicle without a licence to do so.

The police reported the circumstances to the council as licensing authority. As part of the investigation enforcement officers attended the premises at Felsted to inspect the records of hirings which the company is required to keep as a condition of its licence. The premises were unattended and there were no licensed vehicles at the site. The officers then went to the Rayne site where they found a portacabin used as an office for the company. A number of private hire vehicles were parked there including the vehicle which had been stopped on 28 June. A director of the company was present and there were computers there upon which records of bookings were maintained. Upon being questioned that director was unaware of what had occurred on 28 June. He stated however that the business was trying to find suitable premises in Uttlesford to move to.

As a result of this information enforcement officers interviewed another director of the company, a Mr Andrew Cooper, under caution. Mr Cooper said that a driver other than Mr Chambers who was licensed by this council had been meant to do the job on 28 June but that he had pulled out late on. Mr Cooper then personally allocated the job to Mr Chambers as he did not want to let the children down on the day of their school prom. He knew that Mr Chambers was not licensed as a private hire driver and admitted the offence of using an unlicensed driver. In mitigation he stated that he knew that Mr Chambers was CRB checked as he was a qualified airline pilot. With regard to the use of the premises Mr Cooper confirmed that the company was looking to relocate to Uttlesford. He maintained that the Uttlesford vehicles were operated from the Felsted address and subsequently produced an e-mail from his father-in-law which he relies upon to substantiate that position.

The committee are most concerned that the company used an unlicensed driver on the evening of 28 June. This was a calculated decision on the part of a director of the company which was clearly taken with a view to trying to

preserve the company's goodwill. The company maintains that it believed that Mr Chambers had been CRB checked because of his occupation as an airline pilot. That is no mitigation. Firstly there is no evidence before the committee that airline pilots are required to undergo any CRB checks and if they do that the CRB checks are enhanced rather than basic or standard. The committee is aware that enhanced checks are only permissible in certain circumstances such as when an occupation involves working closely with children. As the role of airline pilot requires little direct contact with passengers of any description let alone children it is highly unlikely that an enhanced CRB check could be obtained by anyone employing airline pilots.

Further it is the function of the council to ensure that driver's licences are only issued to fit and proper persons. The council is the judge of that standard based upon its licensing policies applicable at any time. It is not the function of an operator to decide who is or is not suitable.

Finally there is the issue of insurance. Apparently when stopped Mr Chambers admitted that he had just dropped off 8 children to attend the prom. As the vehicle was empty when he was stopped he was allowed to drive away. However there is a strong probability that as Mr Chambers did not hold a private hire driver's licence that he would not have been covered by insurance to drive a private hire vehicle for hire and reward meaning that the vehicle would not have been properly insured for the journey to the event.

The committee is also concerned that although the company has given an operating address for Felsted there is no evidence that it does in fact operate from there. Indeed the evidence is to the opposite effect. The company is also licensed by Braintree Council. It has a base in that district at Rayne. Its computer records are kept there (the fact that in common with many computer programs the records can be accessed from elsewhere is irrelevant). Its website gives only one address, namely that of the premises in Rayne and the telephone numbers listed on the website relate to Braintree and Chelmsford, not Dunmow which is the dialling code area for Felsted. When officers attended the Felsted address, there were no indications whatsoever that there was any business activity being carried on from the Felsted premises. Mr Cooper maintains that the company does operate from Uttlesford. He says that he is mainly based at the Felsted address and that in addition to the numbers referred to on the extract from the company's website provided by Mr Chamberlain there was a mobile number which was also advertised on that site and that there were many more pages to the website than those Mr Chamberlain produced. The committee understand that in fairness to Mr Cooper Mr Perry carried out research on the company's website. He identified a total of 28 pages all of which gave the Rayne address, Rayne telephone and fax numbers and a Chelmsford telephone number only. Nowhere was there a reference to a mobile number nor to a telephone number consistent with being in Felsted.

The committee find on the balance of probabilities that the company operates exclusively from Braintree and not at all from Uttlesford. It stops short of finding that in giving that address on the application for the operator's licence

that false statement was made as the application form asks for the address from which the business will be carried out and it is possible that the company did intend to operate from that address when the application was made. However on the finding of the committee it has not done so. Mr Cooper demonstrated an ignorance of what is meant to “operate” a private hire vehicle. As Mr Perry pointed out in his advice to the committee it means to make provision for the invitation or acceptance of bookings for the hire of a private hire vehicle. The “operation” takes place at the point where bookings may be accepted. That is clearly Rayne. It is the only address and telephone number used by the company for the promotion of its business. Bookings are invited and accepted at Rayne, not Felsted and the company does not therefore operate in Uttlesford. Insofar as Mr Cooper says that he is largely based at Felsted this is not corroborated by his co-director’s statement. Given this discrepancy and the statement that Mr Cooper made that the mobile number was used to advertise the business in Felsted is plainly false the committee were unable to place any reliance upon Mr Cooper’s evidence.

The council’s licensing policy provides that a suspension of an operator’s licence is likely to be disproportionate. However the council are to licence operators only when the council is satisfied that the operator is a fit and proper person. A licence may be revoked because of an offence under the legislation, conduct on the part of the operator which appears to render him unfit to hold a licence or for any other reasonable cause.

The committee are satisfied that the company has committed an offence under the relevant legislation in using an unlicensed driver on 28 June. The commission of the offence was deliberate and in the view of the committee that conduct renders the company unfit to hold an operator’s licence. The committee is also concerned that the company purports to have a base in the district when its operation is clearly conducted from Braintree. In the view of the committee this is in addition a reasonable cause for revoking the licence.

When dealing with issues such as whether a licence holder is a fit and proper person to hold a licence, issues of proportionality do not arise. If an operator is not a fit and proper person then it should not hold a licence. However had proportionality been a factor the committee would not have considered it disproportionate to revoke the licence as its decision has no direct effect upon the company’s operation in Braintree which is clearly where the business is run from.

The decision of the committee therefore is that the operator’s licence of Essex Limo’s Limited should be revoked under s.62 (1)(a), (b) and (d) Local Government (Miscellaneous Provisions) Act 1976 on the grounds that the company has committed an offence under Part II of that Act in using an unlicensed driver; that because of the circumstances of the offence the conduct of the company renders it unfit to hold an operator’s licence and that it is a reasonable cause to revoke the licence when the operator has failed to establish itself in the district at the address given as the intended address for operation within 7 months of the licence being granted and there is no evidence of its intention to do so.

The Assistant Chief Executive-Legal explained there was a right of appeal within 21 days of notification of the decision.

The meeting ended at 2.45pm.