

Committee: Licensing and Environmental Health Committee

Agenda Item

2

Date: 5th February 2014

Title: Determination of a Combined Hackney Carriage/Private Hire Driver's Licence

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Item for decision

Summary

This report has been submitted for members to consider revocation of a Combined Hackney Carriage/Private Hire Driver's licence in accordance with Section 61(1) (b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause.

Recommendations

The Committee determine whether or not the licence should be revoked.

Background Papers

Letter from Mr Burlingham dated 15th January 2014 regarding his appearance before Hertford Magistrates Court.

Copy of the current Licensing Standards for drivers.

Copy of current Combined Hackney Carriage/Private Hire Driver's Licence in the name of David W Burlingham.

Copy of the current Combined Hackney Carriage/Private Driver Conditions in the name of Mr D W Burlingham.

Acknowledgement by David Wendell Burlingham to abide by the conditions of his licence.

Trial Note from Julianna Tolan 5 Paper Buildings, Temple, London.

Record of interview by Hertfordshire Constabulary.

Impact

Communication/Consultation	None.
Community Safety	The authority has a duty only to licence drivers who are considered to be fit and proper.
Equalities	None.
Finance	None.
Health & Safety	None.
Human Rights/Legal	Members are obliged to grant a licence to

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Implications	<p>an applicant who holds a full current driving licence and has held one for at least 12 months but must not grant a licence unless they are satisfied that the applicant is a fit and proper person. In the event of a licence being suspended or revoked a driver has the right of appeal to a Magistrates Court.</p> <p>Whilst it is legitimate for councils to have policies, they may not be rigidly bound by them and must be prepared to make exceptions to policy in appropriate circumstances.</p>
Sustainability	None
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

- 1 On 14th July 2011 David Wendell Burlingham, 17 Ashleigh Park, Gore Lane, Ware, Hertfordshire was issued with his first Combined Hackney Carriage/Private Hire Driver's Licence to drive on behalf of 24 x 7. That licence expired on the 30th June 2012.
- 2 At the time of issue attached to that licence is a copy of the current conditions which a driver signs to acknowledge receipt and compliance with those conditions. As the licence is renewable on an annual basis Mr Burlingham continues to hold that licence which now expires on 30th June 2014.
- 3 On 14th January 2014 Mr Burlingham telephoned the Licensing Officer to report that he appeared before Hertford Magistrates Court charged with an offence of common assault and another of using abusive language. He stated that he was found not guilty of the assault but convicted of using abusive language which was deemed to be racially aggravated. He was advised to write to this Council giving the details that led up to his appearance in Court together with the penalties that were imposed. Mr Burlingham complied with that request and his correspondence duly arrived at the Council Offices on 16th January 2014.
- 4 It appears that on 26th September 2013 an altercation occurred between Mr Burlingham and two other male persons who are described as neighbours. The cause appears to be over the neighbours parking their vehicles and blocking the access road to the close where they reside. During the course of the altercation it was alleged that Mr Burlingham used racially aggravating language towards one of the neighbours details of which are contained in the record of interview between Mr Burlingham and Hertfordshire Police.

- 5 An allegation of a common assault was made to Hertfordshire Constabulary by one of the neighbours identifying Mr Burlingham as the assailant. This was duly recorded by the Police who subsequently arrested Mr Burlingham and conveyed him to Hoddesdon Police Station where he was interviewed. At the conclusion of the proceedings he was charged with one offence of common assault and a second charge of using threatening, abusive, or insulting words or behaviour with intent to cause intentional harassment, alarm or distress. This offence became a racially aggravated because of the language used by Mr Burlingham towards one of the neighbours. After being charged he was released on Police Bail to attend Court.
- 6 On 23rd December 2013 he pleaded not guilty to both charges when he appeared before Hertford Magistrates Court where he was legally represented by Counsel. After hearing all of the evidence the Court acquitted him on the charge relating to the assault but convicted him of the second charge. The Court imposed a Conditional Discharge for 12 months. Furthermore he was ordered to pay prosecution costs amounting to £320 and ordered to pay a victim surcharge of £15. Mr Burlingham has indicated that it is his intention to appeal to the Crown Court against both conviction and sentence.
- 7 His current employer has indicated that if a suspension were imposed or members felt that he still remained a fit and proper person then his services would still be retained by the company
- 8 The Council has adopted standards which it expects drivers licensed by the Council to meet during the period a licence is held. Whilst each case will be dealt with on its individual merits, licence holders who cease to meet these standards are likely to have their licence suspended or revoked or not renewed on application. One of those standards is that the driver should not have been conditionally discharged for any offence in the last 12 months. By virtue of his conviction Mr Burlingham fails to meet our current standards for drivers.
- 9 His conviction was recorded on 23rd December 2013 and the first time the council became aware of this was when he made contact on the 14th January 2014. A condition of licence for all drivers relates to convictions, cautions and fixed penalty notices being notified to the council in writing within 7 days. Mr Burlingham has failed to comply with this condition.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
An unfit person is authorised to drive private hire vehicles in the district.	1 – Members are aware of and apply our licensing standards.	4 – Permitting unfit persons to drive may cause damage to property, personal injury or even death.	Members revoke the licence held by Mr Burlingham unless they are satisfied that he remains a fit and proper person.

- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.