

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 5
FEBRUARY 2014**

Present: Councillor D Perry (Chairman)
Councillors J Davey, V Ranger and A Walters

Officers Present: M Chamberlain (Enforcement Officer), M Hardy (Licensing Officer), M Perry (Assistant Chief Executive – Legal) and A Rees (Democratic Services Support Officer).

Also Present: Mr Burlingham (Driver in relation to Item 2) and the driver in relation to Item 4.

LIC53 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillor J Loughlin.

There were no declarations of interest.

LIC54 DETERMINATION OF A COMBINED HACKNEY CARRIAGE/ PRIVATE HIRE DRIVER'S LICENSE

The Licensing Officer said he had received a letter from Mr Burlingham's solicitor that requested an adjournment of the meeting subject to the outcome of the appeal of the relevant court case.

The Assistant Chief Executive – Legal said an adjournment was inappropriate because the Committee was not able to go behind the facts of the conviction. There was no reason to believe an appeal would be successful and the date of the appeal was unknown.

The Licensing Officer said that 14 July 2011 was the first instance Mr Burlingham was issued with a Combined Hackney Carriage/ Private Hire Driver's Licence. He had subsequently held a license on an annual basis with his current licence due to expire on 30 June 2014. On 14 January 2014, Mr Burlingham telephoned the Licensing Officer to report that he had appeared before Hertfordshire Magistrates Court charged with two offences: one of common assault and one of racially aggravated abusive language. He said he was found not guilty on the first charge, and guilty on the second. The Licensing Officer requested Mr Burlingham to confirm this in writing which he did. On 26 September 2013, there was an altercation between Mr Burlingham and two others, who were described as neighbours, over the neighbour's vehicles being parked in such a way as to prevent access. It was alleged that Mr Burlingham used racially aggravating language during this altercation. An allegation of common assault was made to Hertfordshire Constabulary and consequently Mr Burlingham was arrested and later interviewed. After the interview, he was charged with common assault and with using racially aggravating language. On 23 December 2013, he appeared before Hertfordshire Magistrates and pleaded not guilty to both charges. He was found not guilty of assault, but found guilty of using racially

aggravating language. The Court imposed a Conditional Discharge for 12 months. He was also ordered to pay prosecution costs amounting to £320 and a victim surcharge of £15.

The Licensing Officer said his employer had indicated that if a suspension was imposed and he remained a fit and proper person, his services would be retained. His conviction was on 23 December 2013, and he had first contacted the Council on 14 January 2014. This breached the condition of his licence that stated that a driver must notify the Council of any convictions, cautions or fixed penalty notices in writing within seven days.

Councillor Perry asked Mr Burlingham whether he was happy with what the Licensing Officer had said. He asked Mr Burlingham to provide his account of the event.

Mr Burlingham said that he was happy with the Licensing Officer's account. He said that he had not used racially aggravating language and his neighbours were the ones being aggressive. They wanted him to lose his job. He said that the Police arrived at 11pm the night of the altercation and that he still believed he was innocent.

In response to questions by the Committee, Mr Burlingham said that he could not have been aggressive because he had injured his shoulder the night previous to the altercation. He hadn't notified the Council because his solicitor was on holiday over the Christmas period. He informed the Council having been advised to do so by his employer. He denied being aggressive, but admitted calling one his neighbours "trailer trash". There had been no incidents subsequent to this one.

The Assistant Chief Executive – Legal reminded the Committee that they could not go behind the facts of the conviction. He said that if Members considered that Mr Burlingham remained a fit and proper person they should take no action regarding the circumstances of the offence, but that the Council's policy provided that a sanction for breach of a condition was appropriate. The policy provided that the starting point for a first breach of condition was a 5 day suspension. This could be increased or decreased if there were aggravating or mitigating factors. In determining whether to impose a sanction it would assist Members to know of Mr Burlingham's financial circumstances. He asked Mr Burlingham how much he earned.

Mr Burlingham said that he earned £350 - £400 a month after tax and received a state pension, along with three other smaller pensions.

The Enforcement Officer, the Licensing Officer and Mr Burlingham left the room at 10.30am, so the Committee could consider its decision. They returned at 10.40am.

DECISION

Councillor Perry said, relating to his Court conviction, that the Committee considered that Mr Burlingham remained a fit and proper person. Mr

Burlingham should ensure he did not enter into similarly compromising positions in the future. Relating to Mr Burlingham's failure to notify the Council 7 days after a conviction, he said the Committee found no aggravating or mitigating factors and Mr Burlingham would be suspended for 5 days.

The Assistant Chief Executive – Legal told Mr Burlingham that he had 21 days to appeal. During this period the suspension would not be active. If he chose to appeal, the suspension would not be active until the appeal was heard.

LIC55 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.

LIC56 ITEM 4 – DETERMINATION OF A PRIVATE HIRE/ HACKNEY CARRIAGE DRIVER'S LICENSE

The Chairman asked the Committee to consider this item before Item 3, because the driver for this item was present, whereas the driver for Item 3 was not. The Committee agreed to move this item forward.

The driver in relation to Item 4 was invited into the room.

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had been convicted of an offence under Part II of that Act.

The Enforcement Officer said that the driver had first become a licensed driver on 25 September 2013, with the license due to expire on 31 August 2014. On 25 November, she was carrying out a contract and was stopped by a Contract Monitoring Inspector for Essex County Council on a routine inspection. She was not wearing her hire driver's badge. On 20 December 2013, she attended an Interview Under Caution relating to her failure to wear a hire driver's badge. She said that she kept her badge in her coat pocket and because she was late, she did not take her coat and consequently her badge. She accepted a formal caution.

Councillor Perry asked the driver if she disputed anything the Enforcement Officer had just said. He asked to explain the events relating to the caution and whether her employer explained the procedure relating to the wearing of private hire driver's badges.

The driver said she did not dispute anything said by the Enforcement Officer. Relating to the event, she said that because the weather was warm and she was running late, she had forgotten to take her coat when she left her house.

She could not remember whether her employer had told her the procedure surrounding the wearing of private hire driver's badges.

The Enforcement Officer, the Licensing Officer and the driver left the room at 10.50am, so the Committee could consider its decision. They returned at 10.55am.

DECISION

Councillor Perry reminded the driver of her responsibility to wear her badge whenever she was working and that it was her responsibility, not that of her employers. The Committee considered her a fit and proper person and took no action with regard to her licence.

LIC57

ITEM 3 – DETERMINATION OF A PRIVATE HIRE/ HACKNEY CARRIAGE DRIVER'S LICENCE

The driver was not in attendance as she was abroad on a pre-booked holiday. However she was anxious that the matter should be resolved as soon as possible and had requested the Committee to deal with the matter in her absence. The Committee agreed to do so.

The Committee considered the suspension or revocation of a Private Hire/Hackney Carriage Drivers Licence in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading that since the grant of the licence the driver had been convicted of an offence under Part II of that Act. The Enforcement Officer presented his report which the Committee took as read.

On 13 November 2013, the driver was carrying out a schools contract. She was stopped by a Contact Monitoring Inspector for Essex County Council for a routine inspection. She was found to be carrying a private hire driver's badge that had expired on 31 March 2013.

On 26 November 2013, she attended an Interview Under Caution for this offence. She explained that the offence was an error on her part. Whilst cleaning out her dresser she picked up the incorrect badge by mistake. She had since destroyed the invalid badge.

The Committee considered its decision.

DECISION

Councillor Perry said the Committee found that she remained a fit and proper person and took no action with regard to her licence. She should be sent a letter reminding her of her responsibility to wear her driver's badge at all times.

The meeting ended at 11.05am.