

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH  
COMMITTEE held at the TOWN HALL SAFFRON WALDEN at 2pm on 24  
SEPTEMBER 2014**

Present: Councillor D Perry (Chairman)  
Councillors J Davey, J Salmon and A Walters.

Officers in attendance: M Chamberlain (Enforcement Officer), J Jones  
(Licensing Officer), M Perry (Assistant Chief Executive – Legal)  
and M Cox (Democratic Services Officer).

Also present: The applicants and supporters in relation to items 3 and 5.

**LIC27 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**LIC28 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.

**LIC29 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE (ITEM 2)**

The matter had come before the Committee in accordance with section 61(1)(a)(ii) Local Government (Miscellaneous Provisions) Act 1976 under the heading any other reasonable cause because the driver had an impending prosecution.

**DECISION**

To defer the determination of the license until after the driver's case had been heard by St Albans Magistrates Court on 10 November 2014.

**LIC30 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE  
DRIVER'S LICENCE (ITEM 3)**

The driver and his daughter attended the hearing. The driver confirmed that he had received copies of the report and background information.

The Enforcement Officer spoke to his report. He explained that the driver had first been granted the licence on 16 March 2012 and was employed carrying out school contract work.

On 29 August 2014, the Council received an email from the operator that the driver had been suspended pending a trial. He had been charged with four counts of indecency with children. On 1 September 2014 the Assistant Chief Executive – Legal had used his delegated powers to suspend the driver's licence until the date of its expiry. The suspension had immediate effect in the interests of public safety.

The Enforcement Officer had subsequently met with the driver who explained that the allegations for which he had been charged had come from his estranged step-daughter and were of a historic nature and spanned a period of four years. The driver said that his daughter had mental health issues and receives medication for the illness.

The driver had received the court summons in early July 2014 but claimed not to be aware of the condition to report this to the Council. The driver appeared at Chelmsford Magistrates Court on 20 August 2014 and pleaded not guilty to the charges. A date had been set for trial on 10 November 2014 at the Crown Court.

The driver did not meet the Council's licensing standards as he had a pending prosecution for a criminal matter, and appears before members for them to determine whether he remained a fit and proper person.

The driver asked the report to be amended to refer to his step daughter's heavy smoking rather than heavy drinking.

Councillor Perry asked for confirmation on whether the driver's contract with the operator had been terminated. The enforcement officer confirmed that the driver had been suspended from his current job pending outcome of the court case.

The driver then made a statement. He said he was devastated at the allegations, which dated back 40 years. These allegations were fictitious, they had never happened and he would state this when it came to court. His daughter-in-law had made the allegations and he explained her long history of mental illness and disruptive behaviour.

Councillor Walters asked if information would be forthcoming about the mental state of his daughter-in-law. The driver said there was no information available at the moment but he was meeting with his barrister shortly when he expected the information to be available.

The Assistant Chief Executive – Legal advised that as the driver had already been suspended, the committee did not need to take any action unless it was satisfied that the driver was now a fit and proper person. The onus was on the driver to show this. The committee could grant him delegated powers in consultation with the Chairman to re-instate the license depending on the outcome of the court case.

The Enforcement Officer and the applicant and his representative left the room at 2.20pm so the Committee could consider its decision. They returned at 2.40pm.

## **DECISION**

Councillor Perry read the following statement 'You have been licenced by this council as a joint private hire/hackney carriage driver since March 2012. You are employed by 24/7 engaged in fulfilling schools contracts. On 29 August 2014 the council received information that you had been charged with a number of offences of indecency with a child including an allegation of child rape. On 1 September 2014 the Assistant Chief Executive – Legal exercised his delegated power to suspend your licence with immediate effect in the interests of public safety. The suspension is for the remaining term of the licence.

The function of the committee this afternoon is therefore to decide whether to allow the suspension to continue or whether the suspension should be lifted

Under the Local Government (Miscellaneous Provisions) Act 1976 councils have a duty only to grant licenses to persons who satisfy the council that they are fit and proper persons. You have been interviewed by a council enforcement officer and he has recorded your response to the allegations in paragraphs 5 and 6 of his report. It is unnecessary to repeat these. The committee note that you have pleaded not guilty to the charge and are standing trial on 10 November.

The committee feel it impossible to come to a conclusion that you are a fit and proper person while the charges are outstanding. The suspension imposed by the Assistant Chief Executive – Legal will therefore continue. However the committee gives the Assistant Chief Executive – Legal delegated authority in consultation with the Chairman to lift the suspension in the event that the charge is withdrawn or dismissed and they are satisfied that you are a fit and proper person

LIC31

## **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE (AGENDA ITEM 5)**

The driver attended the meeting and confirmed that he had received copies of the report and background information.

The Licensing Officer presented her report. She explained that when the driver had applied for a joint private hire/hackney carriage driver's licence, the questions had revealed that he had a series of convictions for motoring convictions dating from when he was a teenager. He had spent 3 periods in prison for no longer than 6 months each time in the late 1960s and 1970s. An enhanced disclosure had been obtained that showed details of the convictions and whilst most were for motoring offences there was one conviction for theft for which a custodial sentence had been imposed.

The applicant did not meet the Council's licensing standards because although all of his convictions were spent point 5 of the Licensing Standards – Drivers stated that an applicant must have “no criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed”.

The driver had discussed his application with the Licensing Officer. He explained how as a juvenile he was passionate about cars and by 1976 had 8 convictions for various driving offences. He explained the circumstances of the theft, that it occurred at a low point in his life. He was living in a shared house in London with a low paid job and because he needed money for food he took his flatmate's watch to a pawn brokers and bought some food with the money. He had no convictions since 1978. He and his family had emigrated to Australia in 2004 returning to the UK in 2011. He had confirmed that if his application were successful Elsenham Taxis in Stansted would offer him employment.

The driver spoke to the committee. He explained that he had been a young stupid teenager, obsessed with driving. Since 1978 he had not been in any trouble. He was married with a family and owned his own house. He now just wanted to provide for his family.

Councillor Perry commented that even though the offences were a long time ago, the driver's record was poor. He was concerned that some of the matters related to dishonesty, like not having insurance or registration documents. The driver said he was now always up to date, and usually ahead with his paper work. He was now a law-abiding citizen.

The Assistant Chief Executive – Legal said that the Committee should judge whether the driver was a fit and proper person. The licensing standards provided that despite a previous custodial sentence relating to dishonesty, a license could be granted in appropriate cases.

The Licensing Officer and the applicant left the room at 2.45pm so the Committee could consider its decision. They returned at 2.50pm

## **DECISION**

Councillor Perry said the Committee found the applicant to be a fit and proper person to hold a private hire/hackney carriage driver's licence

LIC32

## **DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE (AGENDA ITEM 4)**

The Enforcement Officer reported that the driver had not attended the meeting because he was unwell. However as there had been no request for an adjournment the committee decided that the report should be considered in his absence.

The Enforcement Officer presented his report. The driver had held a joint private hire/hackney carriage licence since 1 September 2011 and was employed to carry out school contract work. The license had expired on 31 August 2014 and in accordance with the council's licensing policy an enhanced DBS check had been carried out. This had shown that he received a caution in March 2014 for possessing a knife blade/sharp pointed article in a public place. The driver had breached his conditions by failing to notify the Council in writing within seven days of it being issued.

The driver had also made a false statement to obtain a license by answering no to the question about whether he had been issued with a fixed penalty notice or had any prosecution against him. This was an offence under S.57(3) Local Government (Miscellaneous Provisions) Act 1976, however, the Assistant Chief Executive - Legal had not deemed it to be in the public interest to pursue a prosecution.

The council had also not yet received the medical from the driver that should be undertaken every three years.

The Enforcement Officer had interviewed the driver. In relation to the medical the driver explained that due to his age and previous medical history he had to apply to the DVLA to keep the licence, which entitled him to drive different classes of vehicles. He said he had undertaken and passed a stress tolerance test but this had not yet been passed to the council. The confirmation of a valid medical was still awaited.

The driver explained the circumstances surrounding the caution. He had left his bag containing his personal belongings in a store café. He later had a call from a PCSO because a lock knife had been found in his bag. He had shown this knife to a friend but had forgotten to remove it from the bag. He explained that he used to be a weapons master so knew the dangers of weapons and would not let them get into the wrong hands. The police had issued him with a caution but he was under the impression that it would not appear on a DBS check.

At the interview the driver said that he did not realise that he had to report a caution and could offer no explanation as to why he did not disclose the caution on the renewal form.

The Assistant Chief – Legal explained that the committee had to consider whether the driver was a fit and proper person to hold a license. He highlighted the following issues

- 1) The medical – the license could be granted subject to a satisfactory medical so this was not relevant to the fit and proper person test.
- 2) The caution – the offence was for the possession of a knife and there was no suggestion that the driver had intended to use it improperly.
- 3) Failure to notify a caution – this would normally be dealt with by a 5 day suspension.

- 4) False statement to obtain the license – answering the question incorrectly on the application form appeared to be a deliberate dishonest act.

The Committee considered the facts of the case and announced the following decision.

## **DECISION**

The driver has been licensed by this council as a joint private hire/hackney carriage driver since September 2011. He has renewed his licence annually and submitted an application to renew his licence on 29 July this year. On the application form there is a question “Have you in the last year been convicted of or cautioned for any offence (including motoring offences), been issued with a fixed penalty notice or is there any prosecution pending against you” the driver answered that question “no”. After that the form states “If yes please give particulars, otherwise write none”. Alongside this the driver wrote “None”.

His driver’s licence was issued subject to a number of conditions. A copy of the conditions is issued to drivers annually with their licence. One of the conditions requires drivers to notify the Council in writing within 7 days of any cautions received.

This year being the third anniversary of the grant of his first licence the driver was required to undergo a DBS check. When this was received by the Council it revealed that on 12 March 2014 the driver received a police caution for an offence of being in possession of a knife in a public place. He did not inform the Council of this caution within 7 days as required by the conditions of the licence or indeed at all, the Council only becoming aware of the caution when the DBS check was received.

As a result of the caution the driver does not meet the Council’s licensing standards one of which is that a driver should not have received an official caution within the last 12 months.

The driver was interviewed by a council enforcement officer and explained the circumstances leading to his caution. These are recorded in paragraph 8 of the officers report and it is unnecessary to repeat them. He was asked why he did not report the caution as required by the conditions on the licence and he said that he was under the impression that it would not appear on a DBS check and that he thought it necessary to report convictions only not cautions. The driver offered no explanation as to why he answered the questions on the renewal form incorrectly.

Under the Local Government (Miscellaneous Provisions) Act 1976. Although the Assistant Chief Executive – Legal has determined that a prosecution is not necessary in the public interest nevertheless the committee must have regard to the fact that an offence has been committed.

When a driver does not meet licensing standards a licence would normally be refused. It is for the applicant to satisfy the committee that on the balance

of probabilities he is a fit and proper person to hold a licence even though the standards are not met.

But for his completion of the application form the committee would have found the driver to be a fit and proper person. It notes the circumstances of the offence and that as the offence was one of being in possession of a knife and not of an offensive weapon the police had no reason to believe that the knife would be used for an improper purpose. Breaching a condition of a licence would not usually be a reason to refuse to renew. Such a matter would usually be dealt with by a suspension for a period of 5 days. Under s.61(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 a local authority may refuse to renew a driver's licence on the grounds that since the grant of the licence the driver has been convicted of an offence of dishonesty or an offence under the 1976 Act itself. Under s.61(1)(b) of the Act a licence may also be refused for any other reasonable cause.

The committee acknowledge the fact that there has been no conviction for any offence and therefore s.61(1)(a) does not apply. However it does take note of the fact that the driver did commit the offence of making a false statement to obtain a licence. The committee regard that offence as being an offence of dishonesty. Having considered his explanation the committee is of the view that he deliberately failed to disclose the caution on his application form because he did not think it would be revealed by the DBS check. However the conditions of his licence and the application form are clear that any caution has to be reported to the council, not just those which would be revealed by a DBS check.

It is essential that licensed drivers should be honest. By committing the offence of making a false statement to obtain a licence the committee is not satisfied that the driver has demonstrated that he is honest and for that reason the committee is not satisfied that he are a fit and proper person. s.51 of the 1976 Act provides that councils shall not grant a licence unless they are satisfied that the applicant is a fit and proper person. As the committee is not so satisfied in the driver's case his application for renewal is refused under s.61(1)(b) of the Act for any other reasonable cause.

The meeting ended at 3.10pm.