

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at SAFFRON WALDEN TOWN HALL at 2pm on 20 APRIL
2015**

Present: Councillor D Perry (Chairman)
Councillors J Davey and D Morson.

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

Others in attendance: The driver in relation to Item 4.

LIC75 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Wells.

The Committee agreed to deal with Item 5, followed by Item 4, 3 and then Item 2.

LIC76 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.

**LIC77 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE – ITEM 5**

Members received a report from the Licensing Officer. She said the applicant had applied for a licence on 13 March 2015. The application form asked applicants to list all convictions both spent and unspent.

The applicant disclosed five offences which were; two convictions of taking a conveyance without authority in December 1981 and January 1982, assault/ABH in March 1983, using threatening abusive words and criminal damage in March 1994 and one offence for driving with excess alcohol in 2002 for which he was disqualified from driving for 18 months.

The Licensing Officer said the applicant received a community order of 150 hours and was disqualified from driving for six months for the first offence of taking a conveyance without authority. For the second he was sentenced to one month's imprisonment and disqualified from driving for 15 months. For the conviction of assault occasioning actual bodily harm he received a conditional discharge and was ordered to pay compensation. He received a further conditional discharge and was ordered to pay costs for the offence in 1994.

The applicant did not currently meet the Council's licensing standards as although all his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, the Council's licensing policy said 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 Licensing Officer said on 2 April 2015 she conducted a phone interview with the applicant to ask him about the circumstances surrounding his conviction in 1982. The applicant explained that he had got an apprenticeship with the Air Force which he did not complete. He had split up with his girlfriend and been unemployed for around 12 to 18 months. He decided to go to the coast with a friend so they stole a vehicle which the applicant crashed shortly into the journey.

The Licensing Officer explained the applicant had no convictions since 2002. If the Committee granted him a licence he would be employed by 24/7 Ltd driving children with special needs to and from school.

The Licensing Officer, in response to a question by Councillor Perry, said the offence of ABH was committed shortly after the applicant had split up with his girlfriend at the time.

Members expressed their reservations at determining the application for the licence given that the applicant was not present at the meeting. They discussed whether the case should be deferred to give the applicant another opportunity to attend.

DECISION

Members agreed to defer their decision. The Assistant Chief Executive – Legal said he would write to the applicant inviting him to attend the next extraordinary meeting of the Committee. The letter would give the applicant 14 days to respond and would state that the Committee would be minded to refuse the application if the applicant declined to attend, or did not provide a response within 14 days.

LIC78

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE – ITEM 4

The Enforcement Officer outlined his report. He explained the driver had first been granted a private hire driver's licence on 12 January 2010, with the current licence due to expire on 31 December 2015.

On 28 January 2015 the Council received a letter from Essex Police explaining the driver had been arrested on 16 January 2015 on suspicion of stalking a person causing serious alarm/distress and destroying or damaging property. On 17 January 2015 the driver was charged for both offences and was due to appear at North Essex Magistrates Court on 2 February 2015.

The Enforcement Officer explained that on 30 January 2015 the Council had written to the driver informing him that his licence had been suspended with immediate effect in the interest of public safety. The driver responded in a letter dated 3 February 2015 and explained the reasons for his arrest, saying his relationship with his fiancé had ended on bad terms. In his letter the driver stated all the charges relating to harassment had been dropped at Chelmsford Magistrates Court on 2 February 2015. He had however pleaded guilty to the offence of wilfully damaging her vehicle. The case was due to be heard on 24 June 2015. In light of the driver's letter, the Council lifted the driver's suspension.

The Enforcement Officer said the driver's case was due to be heard by the Committee on 4 March 2015 but was adjourned after the driver failed to attend as he had thought the meeting was on 5 March.

On 19 March 2015 the Council received a letter from the County Council explaining the driver was not allowed to work on any school contract services. On the same day 24/7 Limited also contacted the Council that the driver had been suspended on 18 March 2015 for failing to notify them of a pending prosecution. The driver was also awaiting a disciplinary hearing with the Company.

Members were informed by the Enforcement Officer that on 1 April 2015 he met with the driver at the Council Offices. The driver said he thought he may have been sacked by 24/7 Ltd, but still wanted to carry on as a licensed driver. He confirmed he was charged on 17 January 2015 but was not aware he needed to notify the Council of a pending prosecution and would have notified the Council if he had been aware.

The driver was interviewed by the Police on 16 January 2015 alongside his solicitor. The Police produced a photo of the driver swinging his arm at the side of his ex-partner's vehicle, but it did not appear any form of instrument was in his hand. The driver explained he was going to visit his ex-partner but had changed his mind. However, his solicitor had still advised him to plead guilty to the criminal damage offence.

On 2 February 2015 the driver attended Chelmsford Magistrates and pleaded guilty to the criminal damage offence and not guilty to the stalking/harassment charge. At the meeting on 1 April, the Enforcement Officer asked the driver why he had said the charge for harassment had been dropped when in fact the driver had pleaded not guilty. The driver said he got mixed up, but did not mean to deliberately mislead the Council. He also said he was not aware of any disciplinary hearing with 24/7 Ltd but claimed to have a text message from the Company asking whether he wanted to stay with them.

The Enforcement Officer said the driver fell below the Council's licensing standards as he had two pending prosecutions. It was up to Members to decide whether he remained a fit and proper person to hold a private hire driver's licence.

The Enforcement Officer answered questions by Members. He said the driver was still awaiting disciplinary action. The driver had said in their meeting he was aware his ex-fiancés vehicle had been damaged, but insisted he had not damaged it.

Councillor Perry invited the driver to speak. The driver explained that he loved his job. He disagreed with the pending prosecution he had received for harassment. He had never harassed his former partner and had only wanted to know whether she was okay.

Members asked the driver about the charges relating to damaging the victim's vehicle as he had claimed he had not damaged her vehicle. Councillor Perry highlighted the letter which the driver had sent to the Council on 3 February, in which the driver admitted to damaging the vehicle.

In response the driver said he had caused some minor damage to the vehicle. Prior to his damaging of the vehicle, the vehicle had been significantly damaged by another party, which had caused his former partner to have the vehicle re-sprayed.

The driver then answered questions from Members about the charge for harassment. The driver said he did not understand the legal system and assumed that once he pleaded not guilty to the charge of harassment, the charge was then dropped.

The Assistant Chief Executive – Legal outlined the court procedure which the driver would have experienced. On 2 February the driver would have attended his first hearing where he would have given his plea for both charges. The driver pleaded guilty to the charge of damaging a vehicle and not guilty to the charge of harassment.

After giving his plea for both charges, a date for the second hearing would have been agreed with him, so he could be sentenced for the charge of damaging a vehicle and be trialled for the charge of harassment. This would have been explained to the driver so he should have been aware that the charge of harassment had not been dropped.

The driver, in response to a question by the Enforcement Officer, explained he was still awaiting his disciplinary hearing with 24/7 Ltd and as a result was still suspended by them.

The Assistant Chief Executive – Legal said the driver fell below the Council's licensing standards as he currently had two pending prosecutions. The burden of proof was on the driver to advance reasons why the Council should depart from its policy and demonstrate why he remained a fit and proper person to hold a private hire driver's licence.

The driver and the Enforcement Officer left the room at 2.50pm so the Committee could consider its decision. They returned at 3.10pm.

DECISION

The driver has been licensed as a private hire/hackney carriage driver since January 2010. He is employed by 24/7 as a school contracts driver.

In January 2015 the council received information to the effect that the driver had been charged with criminal damage on a number of occasions and an offence of harassment causing serious alarm or distress. He attended court on the 2 February when he pleaded guilty to the offence of criminal damage. He wrote to the council the day after the hearing confirming his guilty plea but maintaining that he had been cleared of the charges of harassment. This was not the case. In fact he pleaded not guilty to those charges and awaits trial for them. He will be sentenced for the offence of criminal damage on the same day.

As the driver has pleaded guilty to an offence he now has a conviction as a result of which he does not meet the council's licensing standards. As he is facing a further prosecution he does not meet the standards for that reason also. The council's policy is that where a driver ceases to meet licensing standards, the licence will usually be revoked. The committee is not bound by that policy but is for a driver who does not meet the standards to satisfy the committee that he remains a fit and proper person and that there are good grounds to depart from its policy.

The driver had advanced no such grounds. Indeed there are aggravating factors in that he has tried to mislead the committee twice. In the first instance he said that he had been cleared of the charges of harassment. That was not the case and it is not credible that the driver was not aware of the fact that the charges were still pending and he was awaiting trial. In the second instance he maintained today that he had not committed the offence of criminal damage and that he only pleaded guilty on legal advice. It was only when his attention was drawn to his letter to the council of 3 February in which he admitted the offence that he acknowledged that he had in fact caused damage to his former partner's car.

The committee are not satisfied that the driver is a fit and proper person and his licence is therefore revoked.

The Assistant Chief Executive – Legal informed the driver he had a right to appeal the decision within 21 days of receiving a copy of the decision. If he decided to appeal the decision, he would be able to continue driving as a private hire driver until the appeal was heard.

LIC79

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

Members agreed to deal with the case in the driver's absence.

They received a report to determine a private hire/hackney carriage driver's licence from the Enforcement Officer. He explained the driver held a licence due to expire on 31 January 2016. Council records list the driver as the sole licensed driver for Concept Chauffeurs Limited.

Licensing records showed the driver's home address as Goddard House, 86 High Street, Great Dunmow, Essex, CM6 1AP, the same as Concept Chauffeurs Limited. However, council tax records show this address is not a domestic premises and is only registered for business rates. Therefore, the driver cannot be living there.

The address was also supplied to the DVLA as his address. It was a legal requirement to notify the DVLA of a change in address and an offence to give a false statement to obtain a licence.

On 6 February 2015 an Enforcement Officer visited the operating address of the Company to inspect their record of private hire bookings. He spoke to an employee of another company who said that currently none of the other offices were in use. It was explained to the Enforcement Officer that the Company had moved out six months. The driver was not living at the address.

The Enforcement Officer said letters were sent to the driver on 12 February 2015 and then on 12 March 2015 asking him to explain why he had not informed the Council of these changes within seven days.

Under the Council's policy drivers were required to inform the Council of a change in residence within seven days. The driver had not done this and the Council did not know where the driver currently lived. Furthermore, the driver appeared to have given a false statement in order to obtain a licence by giving incorrect information regarding his address.

Following a question by Councillor Morson, the Enforcement Officer explained that the Council had still not received a response from the driver.

DECISION

The driver has been licensed by this council as a private hire/hackney carriage driver since February 2013. He is the sole director of an operator licensed by this council, Concept Chauffeurs Limited. That company has one vehicle associated with it namely a Mercedes Benz Viano Ambiente.

When applying for his driver's licence, the driver stated that his home address was Goddard House, 86 High Street, Great Dunmow, Essex CM6 1AP. That is the same address as the operating address of Concept Chauffeurs Limited. Council records show that Goddard House is not registered for council tax but is only registered for business rates. It should not therefore be used as a dwelling.

On the 6 February 2015, an enforcement officer visited Goddard House to inspect the records of private hire bookings. He met there with an employee of another company who confirmed that Goddard House contains a number of small offices to let. He showed the enforcement officer the office formerly occupied by Concept Chauffeurs Limited and told him that the company had moved out about six months previously. The enforcement officer confirmed the

room was empty with no belongings whatsoever and clearly there was no one living at that address.

On 12 February 2015 a letter was sent to the driver asking him to supply his new address and explain why he had not informed the council of the change of address within seven days as required by conditions attached to the licence. No reply was received and a further letter was sent on the 12 March asking the driver to give the information required within a further seven day period. Nothing has been heard from the driver in response to either letter.

In stating that his residential address was Goddard House, the driver made a false statement with a view to obtaining a licence. This is an offence under the Local Government (Miscellaneous Provisions) Act 1976. The committee understands it may be difficult to locate the driver for the purpose of serving proceedings if a prosecution were to be instigated. If the driver can be traced the committee would wish there to be a prosecution. In the meantime however, for making a false statement to obtain a licence and for failing to observe the conditions of licence by notifying a change of address, the driver has demonstrated to the committee that he is not a fit and proper person to hold a private hire/hackney carriage driver's licence and the licence is therefore revoked pursuant to s.61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause.

RESOLVED that the public are no longer excluded from the meeting.

LIC80

DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE – CONCEPT CHAUFFEURS LIMITED

The Enforcement Officer presented his report to the committee. He said Concept Chauffeurs Limited currently held a Private Hire Operator's Licence due to expire on 31 July 2015 and first granted on 4 February 2013. Currently the company had one director, one licensed private hire vehicle and one licensed driver.

The Company was first investigated by the Council in January 2015 after the private hire vehicle test expired in 6 January 2015 and whilst the Company had not arranged a new test. However, the vehicle did pass a test on 19 January 2015.

The Enforcement Officer explained that licensing records stated the holder of the licence and the Company's operating address was Goddard House, 86 High Street, Great Dunmow, Essex, CM6 1AP. However, Companies House records indicated the Company had left that address on 24 November 2014 and was now registered at 5 Duckett's Wharf, South Street, Bishop's Stortford, Hertfordshire, CM23 3AR.

Concept Chauffeurs had obtained a private hire vehicle licence at the address of Goddard House. The Company applied for the licence to be renewed on 12 December 2014 and registered the vehicle with the DVLA on 24 November

2014 at the same address. Additionally, the company's director had obtained a temporary insurance vehicle for the policy at Goddard House under his name instead of the companies.

On 6 February 2015 an Enforcement Officer visited the operating address of the Company to inspect their record of private hire bookings. He spoke to an employee of another company who said that currently none of the other offices were in use. It was explained to the Enforcement Officer that the Company had moved out six months ago and the Director only returned occasionally to pick up post.

The Enforcement Officer explained that two letters were sent to the Company's director, addressed to Goddard House. The first letter, sent on 12 February 2015, asked for the Company's new operating address to be supplied. It also asked for an explanation as to why the Council had not been informed of the changes within seven days. Furthermore, it gave the Company Director until 23 February 2015 to supply the Council with his record of private hire bookings from 1 January 2015 to present.

No response was received so another letter was sent on 12 March 2015 giving the Company seven further days to supply the information. So far nothing had been received.

The Enforcement Officer said the Company had breached the Council's policy for the private hire and hackney carriage trade as it had failed to notify the Council of any change in residential or operator address within seven days. Additionally, it also appeared that the Company had made false statements in order to obtain a private hire operator licence and a private hire vehicle licence. As the Company had failed to provide the Council with a record on private hire bookings on two occasions it had also breached the Local Government (Miscellaneous Provisions) Act 1976.

DECISION

Concept Chauffeurs Limited is licensed as a private hire operator by this council. The licence was first granted on 4 February 2013. The current licence is due to expire on 31 July 2015. The address given for the company when it applied for a licence was Goddard House, 86 High Street, Great Dunmow, Essex CM6 1AP.

On the 24 November 2014 the registered office of the company changed to 5 Duckett's Wharf, South Street, Bishop's Stortford, Hertfordshire CM23 3AR.

On the 6 February 2015 an enforcement officer visited the offices of Concept Chauffeurs Limited at Goddard House, 86 High Street, Great Dunmow to inspect the record of private hire bookings. The building holds a number of small offices. The office formerly occupied by Concept Chauffeurs Limited was completely empty.

On the 12 February 2015 a letter was sent to the company requesting details of its new address and an explanation as to why the council had not been told of

the change of address within seven days of the change occurring as required by conditions attached to the licence. The company was also asked to provide its records of private hire bookings from the 1 January 2015 to the date of the letter. No response was received to that letter. A further letter was sent to the Goddard House address on the 12 March 2015 requesting the same information. That letter also received no response. A final letter was sent on 12 April 2015 to the registered office address of the company and again no response has been received.

The company is in breach of its conditions in that it has failed to notify the council of a change of address and it has failed to make records of bookings available when requested to do so. The failure to keep records as required by conditions is an offence under s.56 of the Local Government (Miscellaneous Provisions) Act 1976. The company has also failed to cooperate with the council by not responding to its correspondence.

In the circumstances, the committee revokes the operator's licence under s.62 Local Government (Miscellaneous Provisions) Act 1976 under s.62(1)(a) for the offence of failing to produce its records when requested to do so under s.62(1)(c) for a material change in circumstances since the licence was granted, namely a change of registered office address and under s.62(1)(b) and (d) in respect of all the matters mentioned above.

Amongst the documentation provided to the committee was a temporary motor cover note in respect of a private hire vehicle licensed by the council under plate number PHV329 namely a Mercedes Benz Vianto Ambiente. The licence for that vehicle does not expire until 31 December 2015. Members noted that the insurance cover exhibited by that cover note expired on the 15 January 2015. There is no evidence to show that the vehicle is currently insured.

Under the Local Government (Miscellaneous Provisions) Act 1976 councils must not license vehicles unless they are insured. In the absence of insurance the committee suspend the vehicle licence under s.60(1)(c) for any other reasonable cause as it is not satisfied the vehicle does currently have insurance cover. The suspension will last until the expiration of the licence on 31 December 2015. However, the committee grants the Assistant Chief Executive, Legal delegated power to remove the suspension in the event that he is satisfied that the vehicle does have adequate insurance cover.

The meeting ended at 3.35pm.