

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 15 SEPTEMBER 2015**

Present: Councillor R Chambers
Councillors S Morris and J Parry.

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 applicant in relation to Item 2, the driver/operator, his
wife, the complainant and three character witnesses in relation to Item 6.

LIC31 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

The Committee resolved that after Item 2, the following item would be Item 6.

LIC32 **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.

LIC33 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE – ITEM 2**

The Licensing Officer presented her report to determine a Private Hire/Hackney Carriage Drivers' Licence. The applicant had applied for a licence in July 2015. As part of the application process applicants were asked to list all convictions, both spent and unspent, as well as any police cautions.

The applicant disclosed two speeding offences, one in 2009 and one in 2011. He also attached a DBS check dated 16 September 2014 which listed two convictions, one for shoplifting in 1977 and one for furnishing false information relating to accounts in 1990. As part of the licensing process the Council was required to obtain an enhanced DBS check. The enhanced DBS check revealed the two convictions. For the former he received a conditional discharge and for the latter he received a six month custodial sentence suspended for two years.

The applicant did not meet the Council's licensing standards as although all his convictions were spent under the Rehabilitation of Offenders Act 1974, the Council's standards said applicants 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 when the applicant made his application it was explained to him that he did not meet the Council’s standards. He was then asked to explain the circumstances surrounding his conviction in 1990. The applicant explained that at the time he was in dispute with his employer and stole £750 from them as he believed it was rightfully his. The money related to travel expenses and a bonus from his previous position.

The applicant then explained that he was sorry for how matters had turned out and he had no dealings with the Police since that incident. He had been granted a licence by the Council from 2005 until 2008. He was then licensed by Luton Council in 2009 and currently held a London Private Hire Driver’s Licence. He was currently the primary carer for his parents and if he was granted a licence he would work for Elsenham Taxis who he worked for when he was first licensed by the Council.

The applicant said he was sorry for how events had turned out. He had been working in Nottingham and whilst a hotel was being sold he had been asked to work in Brighton whilst the deal was finalised. He accepted this as he had been verbally assured that this arrangement would only be for a couple of months and he would receive compensation, as well as payment for travel. The deal for the hotel subsequently fell through, but the applicant was told there was no longer a job available for him in Nottingham and he would have to stay in Brighton. The applicant said he felt that his employer had let him down, which led to him taking money from them.

The Assistant Chief Executive – Legal informed Members that when the applicant was first granted a licence 2005, he did meet the Council’s licensing standards. The Council’s standards had since changed and he did not meet the newer standards as he had received a custodial sentence for an offence of dishonesty. There were four factors Members could consider when deciding whether to depart from the Council’s policy. These were; the nature of the offence, the severity of the offence, the length or severity of the offence and the passage of time since the conviction.

The applicant, the Licensing Officer and Enforcement Officer left the room at 10.15am so the Committee could consider its decision. They returned at 10.25am.

DECISION

The applicant has applied to the council for a combined private hire/hackney carriage driver’s licence. On his application he disclosed that he had two convictions for offences of dishonesty. The first of these was for shoplifting in 1977 for which he received a conditional discharge. The second was for theft by an employee and furnishing false information relating to accounts. For this offence he was given a six month custodial sentence suspended for two years. By virtue of having received a custodial sentence for an offence of dishonesty, the applicant does not meet the council’s licensing standards. In considering

whether to make an exception and grant a licence to somebody who does not meet the council's licensing standards, the council's policy requires the committee to have regard to four matters namely the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since conviction. The offence was clearly one of dishonesty. Theft by an employee constitutes a breach of trust and the offence was therefore a severe one. Although a six month custodial sentence was imposed the committee take note of the fact that this was suspended. The overwhelming factor in favour of the applicant is the passage of time since conviction. It is now 25 years since the offence and there have been no convictions since. In the circumstances, the committee is satisfied that the applicant is a fit and proper person and his licence will be granted.

LIC34

DETERMINATION OF A PRIVATE HIRE DRIVERS AND PRIVATE HIRE OPERATORS LICENCE – ITEM 6

The Enforcement Officer presented his report to determine a private hire drivers and private hire operator's licence. The driver/operator held both a private hire driver's licence and a private hire operator's licence. Both were first granted on 7 October 2013 and were due to expire on 30 September 2015.

On 12 March 2015 at approximately 7.30am, an Enforcement Officer saw a car belonging to the operator which had substantial damage to the offside and appeared to have been involved in an accident. Later that morning the driver/operator was contacted and asked to bring the vehicle to the Council Offices for inspection. His wife brought the vehicle to the Offices later that day. The inspection revealed substantial damage to the offside, mainly to the rear door. It was revealed that, on 3 March 2015, the vehicle had been hit by another vehicle on a narrow road. The Enforcement Officer also noted the rear tyres had a tread of 2mm, the minimum for a licensed vehicle.

The Enforcement Officer said it was the proprietor of the vehicle's duty to inform the Council of an accident within 72 hours of it occurring. Failure to do so was an offence under the Local Government (Miscellaneous Provisions) Act 1976. The matter was referred to the Assistant Chief Executive – Legal who said the vehicle needed to be suspended. The Enforcement Officer then suspended the vehicle with immediate effect under Section 68 Local Government (Miscellaneous Provisions) Act 1976, and removed and retained the plate. The suspension letter was given to the driver/operator's wife.

The driver/operator attended an interview under caution on 19 March 2015. He confirmed he was driving at the time of the accident and there were no passengers in the vehicle. He was not aware he had to report the accident to the Council within 72 hours. The possible sanctions on his licence were explained to the driver/operator.

On 20 March 2015, the Enforcement Officer sent an email to the driver/operator notifying him the Assistant Chief Executive – Legal had authorised a prosecution under section 50(3) Local Government (Miscellaneous Provisions) Act 1976. The case was due to be heard on 8 October 2015.

The driver/operator had work done to the vehicle, which then passed a re-test. The driver/operator collected the private hire vehicle on 25 March 2015. The suspension was also lifted.

The Enforcement Officer said on 25 June 2015, a man attended the offices to make a complaint against the driver/operator. He reported that on 24 June 2015 the driver/operator followed him home and confronted him. The driver/operator accused the complainant of swearing at him, but he was actually singing. The complainant told the driver/operator he had been slow taking off from a junction and the driver/operator then threatened to put the complainant through his front door. The complainant said they both used to work at the Post Office. On one instance the driver/operator took part in strike action but the complainant did not, so the driver/operator called him a scab. The Enforcement Officer advised the complainant to speak with the Police about the incident on 24 June 2015.

On 10 July 2015, the Council received a with compliments slip from the Police regarding the incident between the complainant and the driver/operator. Subsequent enquiries with the Police showed no further action was taken.

The Council then wrote to the driver/operator with a redacted copy of the complaint. On 24 August 2015 the Council received a letter from the driver/operator which stated that he felt he was being accused without justification. He said he felt the complainant had sworn at him so followed the man home to find out why he had been sworn at. He had not threatened the complainant and this part of the complaint was fabrication.

The driver/operator fell below the Council's licensing standards as he had a pending prosecution. This coupled with the complaint meant the matter had been referred to the Committee to determine whether the driver/operator remained a fit and proper person to hold a private hire/hackney carriage driver's licence and a private hire operator's licence.

The driver/operator's wife said she was unclear why the report included reference to the tyre tread as the tyres met vehicle standards. Furthermore she believed that her husband was only advised he would receive a suspension of between one to fourteen days.

The complainant was invited to speak by the Chairman. He said he only mentioned the incident were the driver/operator had allegedly called him a "scab" to provide context to the incident. Regarding the incident in June 2015, the complainant said he had been listening and singing along to music whilst driving his van. The driver/operator had mistaken his singing for swearing and drove to the complainant's house and confronted him.

The complainant left the room at 10.50am.

The driver/operator's wife said she had not seen the Licensing Policy before bringing the damaged vehicle in for inspection. It was possible the complainant was jealous of the driver/operator as the driver/operator was now in a job which he was happy doing. She felt the Assistant Chief Executive – Legal had acted

unprofessionally when the driver/operator had attended the Council Offices to discuss the prosecution for failing to notify the Council of an accident involving a licensed vehicle within 72 hours.

Following a question by Councillor Chambers, the driver/operator said the complainant's house was only 25 yards away from the alleged swearing incident and he wanted to find out why the complainant had sworn at him. Many other companies forwarded on business to him and he had never received any complaints about his service.

The driver/operator presented the Committee with numerous written character references. In addition to these, one operator and two customers presented oral character references.

The driver/operator, his wife, the three character witnesses and the Enforcement Officer left the room at 11.05am so the Committee could consider its decision. The driver/operator, his wife and the Enforcement Officer returned at 11.40am so the Committee could ask further questions.

In response to further questions, the driver/operator disclosed his average daily takings, as well as his average monthly household expenditure.

The driver/operator, his wife and the Enforcement Officer left the room again at 11.40am so the Committee could consider its decision. They returned at 12.35pm.

DECISION

The driver/operator holds a joint private hire/hackney carriage driver's licence and a private hire operator's licence from this council. Both licences were granted in October 2013. On the 3 March 2015 one of the driver/operator's vehicles was involved in a road traffic accident causing significant damage. The driver/operator was required by law to report that accident to the council within 72 hours of the same occurring. He failed to do that and as a consequence is currently facing a prosecution. This is a first offence. The driver/operator denies being aware of the legislation in this respect. That causes the committee some concern but not sufficient to take any action with regard to the driver/operator's licences. The committee however, strongly suggest that the driver/operator should read the council's Licensing Policy and familiarise himself with the legislation that applies to private hire drivers and operators.

What is of more concern to the committee is an incident which occurred on 24 June 2015. A member of the public, the complainant, reported that he was driving his vehicle on that date when the driver/operator followed him home from an area near Winstanley Road, Saffron Walden and confronted him. He alleged that the driver/operator accused him of swearing at him. He denies having sworn and said that he was singing. He alleged that the driver/operator threatened to put him through his front door. The incident was reported to the police who took no action. The driver/operator acknowledges that he followed

the complainant home. He denies threatening him and said that he believed that the complainant had sworn at him and followed him home to ask why.

Having had the benefit of hearing live evidence from the complainant the committee accept his evidence in preference to that of the driver/operator. The committee do not consider that there is any reason why the complainant would take time from work to appear before the committee to make a false allegation. The driver/operator's wife representing her husband suggested that there may be some jealousy on the complainant's part. The committee consider that suggestion to be wholly implausible.

The committee consider the driver/operator's conduct to be entirely inappropriate. His conduct in following the complainant home to confront him is basically an act of road rage. The driver/operator shows no remorse for his actions and indeed appears to consider that he was justified in circumstances where he considers he may have been sworn at.

The committee considered long and hard as to whether the driver/operator remains a fit and proper person to hold a driver's licence and it is right to say that the committee came within a whisker of revoking his driver's licence today. However, the committee has considered character evidence from witnesses and from letters produced by the driver/operator. These show that the driver/operator is highly respected as a private hire driver who may therefore be considered to be a fit and proper person.

The committee feels that it does need to mark the driver/operator's conduct with a sanction to show its complete disapproval of the driver/operator's behaviour with regard to the complainant. The committee have therefore decided to suspend the driver/operator's licence. The driver/operator has provided details of his income and outgoings. In the circumstances, the committee take a view that a 28 day suspension would be an appropriate and proportionate sanction in the driver's case and his licence will be suspended for any other reasonable cause accordingly, and no further action be taken against the operator licence. The driver/operator should be in no doubt that should the council receive a similar complaint in the future his licence is almost bound to be revoked.

LIC35 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 3**

The driver had emailed the Enforcement Officer stating he could not attend the meeting as he had been called into work to provide cover as his employer was short staffed. In light of the driver's email, the Committee decided to defer consideration of the item until the next extraordinary meeting of the Committee. The driver would be written to explaining that the Committee would consider the licence in his absence if he did not attend the next meeting.

LIC36 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 4**

The applicant had been due to appear before an extraordinary meeting of the Committee on 11 August, but had been unable to get time off work. Members decided to defer their decision until this meeting to allow the applicant to attend. The Committee noted the applicant had emailed the Enforcement Officer stating that he could attend the meeting due to illness. In light of the applicant's email, the Committee resolved to defer the application again. The applicant would be written to explaining that the Committee would consider the licence in his absence if he did not attend the next meeting.

LIC37

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 5

In the absence of the driver, the Committee resolved to defer the application until the next extraordinary meeting of the Committee. The driver had not written to the Enforcement Officer, but the Enforcement Officer had been in conversation with the driver's employer who said she was moving house around the time of the meeting. The driver would be written to informing her that her case had been deferred and that the Committee would be minded to revoke her application if she failed to attend the next extraordinary meeting of the Committee.

The meeting ended at 12.45pm.