

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFRRON
WALDEN at 10am on 30 SEPTEMBER 2015**

Present: Councillor R Chambers (Chairman)
Councillors T Goddard and E Hicks.

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).

Also Present: The driver/operator in relation to Item 3, the driver and his mother
in relation to Item 6

LIC38 **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Councillor Parry.

The Committee decided to determine Item 6 after Item 3.

LIC39 **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.

LIC40 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE – ITEM 2**

The Licensing Officer presented her report. She said the applicant had applied for a licence on 9 September 2015. One of the questions on the application form asked applicants to list all convictions, both spent and unspent. The applicant disclosed one conviction of criminal damage in 1972, 3 offences under the Theft Act in 1975, 1976 and 1977, and an offence of drink driving in 1983 for which he received a 12 month driving ban.

Enhanced DBS checks were carried as part of the application process. The applicant's check revealed a conviction for criminal damage in 1972 for which he was fined £5. On 15 July 1975 he was convicted of two offences, going equipped for burglary and burglary with intent to steal for which he was fined £10 and given a two year probation order. The DBS check revealed a conviction on 29 January 1976 for two offences of burglary and theft of a non-dwelling, a breach of the earlier probation order and an offence of theft, for which he was sentenced to one day's imprisonment and a period of borstal training. He was also convicted in 1977 for burglary and theft of a non-dwelling for which he received a two year probation order.

The Licensing Officer said the applicant did not meet the Council's licensing standards as although all of his convictions were spent under the Rehabilitation of Offenders Act 1974, the Council's licensing standards stated that applicants must not 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".

On 16 September, the Licensing Officer conducted a telephone interview with the applicant about his convictions. The applicant explained that his parents split when he was young and that his father was often violent towards his mother and would then become violent towards the applicant. As a result of this he became friends with some older children as they gave him more attention than his father. Regarding the conviction in 1976, the applicant said that the older children had convinced him to break into a garage to steal money and cigarettes. He was sentenced to around eight months in an open borstal. During this period he took a skilled labourers course. The conviction in 1977 related to offence which had occurred before he went to borstal, but was not taken into consideration when he was convicted in 1976.

Following the conviction in 1977 the applicant moved to Worcestershire, before moving to Northampton where he worked at a print factory for 10 years. He then left this job to undergo training before moving back to the same company. He stayed at the company until he was made redundant. Following his redundancy he became an NVQ assessor for five years before retiring.

The applicant had no convictions since 1977. After he moved to Northampton the applicant had been giving talks to young people about his experiences to try and ensure they did not do the same. The applicant was semi-retired and would work on a part-time basis if his licence was granted.

The Assistant Chief Executive – Legal said that when an applicant did not meet the Council's licensing standards there were four factors the Committee should take into consideration when deciding whether to depart from policy. These were; the nature of the offence, the severity of the offence, the length and severity of the sentence and the passage of time since conviction.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. On his application form, the applicant disclosed a number of offences including two in January 1976 for burglary and theft and breach of a probation order. He received a sentence of one day's imprisonment and a period of Borstal training. The convictions were confirmed by the DBS check carried out by the council as part of the application process. By virtue of the custodial sentence for an offence of dishonesty, the applicant does not meet the council's licensing standards.

In determining whether to make an exception to policy the council must have regard to the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since the offence has

occurred. The offences were ones of dishonesty. Although a custodial sentence was imposed it is noted that this was at least in part preferable to the fact that the applicant had breached an earlier probation order. The offences do not appear in themselves to be particularly serious. Save for one drink-drive conviction in 1983 the application has been of good behaviour since his last conviction in August 1977 some 38 years ago. In the circumstances, members are satisfied that the applicant is a fit and proper person and his licence will be granted.

LIC41

DETERMINATION OF A PRIVATE HIRE DRIVERS AND PRIVATE HIRE OPERATORS LICENCE – ITEM 3

The Enforcement Officer presented his report to the Committee. The driver/operator held a private drivers and private hire operator's licence. Both were due to expire on 30 September 2015. When the driver/operator applied for his operator's licence he gave an address in Great Dunmow.

It was a requirement that the private hire driver, operator and vehicle were all licensed by the same authority and the operating address must be within the authority which granted the licence.

On 24 April 2015 the driver/operator notified the Council of a change in operating address as the driver/operator had moved out of the district. On 4 September the Council received a letter from the occupant of the new operating address which stated they did not know the driver/operator. A Licensing Officer emailed the driver/operator about the address and in response he said the number of the address was a typo.

Council Tax records revealed the address was not set up for business rates and was only listed as a domestic dwelling. The Enforcement Officer visited the property on 10 September to establish whether the Company was operating from the address and to check the record of private hire bookings. There was no signage relating to the Company and it appeared the property only had residential use. The Enforcement Officer spoke to a lady who said she was the driver/operators daughter. She confirmed that bookings did not take place at the address and no paperwork related to bookings was kept there either. The Enforcement Officer handed the operator renewal forms to the daughter as she was seeing the driver/operator the next day.

The Enforcement Officer attended the driver/operators home address on 11 September to discuss the matter and look at the list of private hire bookings. The driver/operator explained that he did a lot of work within Uttlesford. When he moved out of the district he asked his daughter whether he could use her address as a correspondence address to which she agreed. All of his booking records were kept at his home address.

The Enforcement Officer said he asked for the driver/operators bookings records for the last year. The driver/operator provided records for the last three months but said the other records were currently with his accountant. The Enforcement Officer informed Members that operators were required to keep

booking records for at least a year. At the meeting the driver/operator said he did around three to four jobs a week in addition to his school contract work. The driver/operator also indicated that he wanted to become more involved with chauffeuring for weddings, in addition to using the Uber app to pick up bookings.

On 15 September, the Council received the driver/operators renewal forms for both his private hire drivers and private hire operator's licences. The operator address given was his daughter's address. The driver/operator signed the declaration confirming there were no other changes.

The driver/operator appeared before the Committee to determine whether he remained a fit and proper person due to the false operation address given. If the driver/operator had given his home address as the operating address he would need to be licensed with Braintree District Council instead.

The Chairman invited the driver/operator to speak about his renewal. The driver/operator explained that he had kept a record of all his bookings from since he had first been licensed by the Council. When he moved out of the district he wanted to remain licensed by Uttlesford District Council and because of this asked his daughter whether he could use her home address as the operating address to which she agreed. The driver/operator said that he took few bookings and any he did take were either via his mobile phone or the internet so he did not require an office for the operation of his business. He asked whether it would be appropriate to rent an office in Uttlesford to store his records so that he could remain licensed by the Council.

In response to questions, the Assistant Chief Executive – Legal said Members were considering the applications to renew both the drivers and operators licences and whether the driver/operator was a fit and proper person in light of the false address given. He confirmed a private hire licence was not required to work as a wedding driver.

The Assistant Chief Executive – Legal also clarified the situation with regard to Council Tax and any requirement to obtain planning permission for the change in use of a premises. Residential properties could legitimately be used as the operating address for a business without the need to apply for a change in use provided the owner of the business and the property were the same person as the use would then be ancillary to the occupation of the dwelling house. If another person's property was used as an operating address for a business, planning permission would be required and the property would need to be set up for business rates. An operating address needed to be used for the full operation of a business so using an office to store booking records would not be sufficient.

The Enforcement Officer and the driver/operator left the room at 10.50am so the Committee could consider its decision. They returned at 11.10am.

DECISION

The driver/operator is licensed by the council as a joint private hire/hackney carriage driver and as a private hire operator. Both licences are due to expire today and the renewal applications have been referred to the committee for determination.

The driver/operator's operator's licence was first granted on the 14 October 2014. At the time the driver/operator gave his address as being in Great Dunmow. On 26 March 2015 the driver/operator moved to an address in Braintree. On 24 April 2015 the driver/operator wrote to the council's licensing department stating that the address from which his business would be conducted had transferred to an address in Saffron Walden. This constituted two breaches of condition on the part of the driver/operator as the conditions of an operator's licence require the operator to notify the council in writing within 7 days of any change of residential address or any change of business address and it is a condition on his driver's licence that drivers shall notify a change of address to the council in writing within 7 days.

The application form for the driver/operator to renew his operator's licence was sent to him at the Saffron Walden address. On 4 September 2015 the council received an email from the occupant of that property who stated that the driver/operator did not live there and the occupant did not know him. The driver/operator replied to say that his notification of change of address to the council was in error and that the address number should have been number 1 instead of number 7. A check with business rates indicates that number 1 is not rated for business use and is subject to domestic council tax only.

On 10 September 2015 an enforcement officer visited the corrected address but could find no trace of any business being carried from that address. The resident was in fact the driver/operator's daughter who stated that no bookings were taken at that address and that bookings either went to the driver/operator's mobile telephone number or via the internet. The occupant also confirmed that no records of any bookings were kept at the Saffron Walden address.

On the 11 September an enforcement office met the driver/operator at his home address in the Braintree district. The driver/operator said that when he moved from Uttlesford to Braintree he asked his daughter if he could use her address as a correspondence address and she agreed. He informed the enforcement officer that all records of bookings were kept at his home address not his daughter's. He said that some of his bookings were taken on the internet and some are taken on his mobile telephone. The driver/operator showed the enforcement officer an office and work station at his home address which he uses for his business and also produced a sample of his private hire bookings. The driver/operator stated that he normally does 3-4 jobs a week in addition to school contract work.

The law relating to private hire drivers, operators and vehicles is contained in the Local Government (Miscellaneous Provisions) Act 1976. Under that legislation an operator must be licensed by the district in which he carries on the business of inviting or accepting bookings for a private hire vehicle. The vehicles and drivers must be licensed by the same authority that grant the

operator's licence. In this case the driver/operator clearly does not operate within the district of Uttlesford. He operates from his home address in the Braintree district. It follows therefore that he should be licensed as an operator there and not in Uttlesford.

Under the 1976 Act councils must grant an operator's licence to an applicant subject to a proviso that they must not grant a licence unless they are satisfied that the applicant is a fit and proper person. The Act also provides that a council may suspend, revoke or refuse to renew an operator's licence on the ground that there has been conduct on the part of the operator which appears to render the operator unfit to hold an operator's licence or that there has been a material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted or for any other reasonable cause. With regard to the driver/operator's conduct the committee notes that he deliberately gave the council an address of a property in Saffron Walden as being his business address when he had no intention of carrying on business there. The committee regard that as being a deliberate attempt to deceive the council into believing that the driver/operator was continuing to operate within the district. The fact that the driver/operator had premises within the district from which he ran his business when he applied for his operator's licence but has ceased to have a place of business within the district since the licence was granted is a material change of circumstances. As a consequence of these two matters, namely that the driver/operator gave an address for his business which was not his true business address and that he does not have business premises within the district, the committee are not satisfied that he is a fit and proper person to hold an operator's licence. In the circumstances, his licence will not be renewed under section 62(1)(b)(c)(d) of the 1976 Act.

With regard to the driver/operator's driver's licence the committee are most concerned that the driver/operator should have notified the council that he was carrying on business from an address in the district when he was instead carrying on business elsewhere and ought to have been licensed by that district. The council regard the driver/operator's conduct in that respect as being dishonest. Indeed that dishonesty appears to be perpetuated on the application form for the renewal of his operator's licence in which he states that his business address will be in Saffron Walden when he is clearly not trading from there. Under section 57 of the 1976 Act the council is entitled to require applicants for operators' licences to submit information including the address or addresses within the district from which they will be carrying out business. Section 57(3) makes it an offence to knowingly or recklessly make a false statement when giving information under that section.

Under section 61 of the Act a council may suspend, revoke or refuse to renew a driver's licence on the grounds that he has been convicted of an offence involving dishonesty or an offence under the 1976 Act or for any other reasonable cause. The committee acknowledge that the driver/operator has not been convicted of any offence. Nevertheless on the balance of probabilities the committee find that the offence of making a false statement has been committed. It is fundamental that drivers should be honest. The driver/operator has failed to demonstrate honesty on his part and in the circumstances the committee are not satisfied that he is a fit and proper person to hold a driver's

licence. The renewal of his licence will therefore be refused under section 61(1)(b) for any other reasonable cause.

LIC42

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 6

The Enforcement Officer presented his report. The driver was currently licensed by the Council with his current licence due to expire on 31 May 2016. On 12 August 2015, the General Manager of 24x7 Ltd received a phone call from a man who claimed to be the driver. The conversation started amicably but once the General Manager informed the man 24x7 Ltd were not hiring, the man became verbally abusive towards the General Manager. He said he used to work for the company 15 years and referenced an intimate relationship the General Manager had with one of his friends.

On 14 August, an Enforcement Officer attempted to contact the driver to arrange an interview about the recording, but he was not available so the Enforcement Officer left a message. The driver's father called back later that day and said he was the person who made the call to the General Manager on his son's behalf. He said he had been licensed by the Council about 20 years ago and knew the General Manager from when she joined Airport Cars as a desk girl. His son wanted to leave Stansted Airport Cars so he had made numerous calls to 24x7 Ltd on his son's behalf. He had previously been told they were recruiting so when the General Manager told him they were not he became frustrated. He admitted that he got agitated but stood by everything he said.

The driver's father attended the Council offices on 21 August 2015 to hand in the driver's DBS check. He again confirmed that he was the person who had spoken to the General Manager. A Licensing Officer confirmed that when the driver attended the Council offices prior to the grant of his private hire licence, the driver's father also attended and dominated the meeting.

The Enforcement Officer said that on 28 August 2015, he and the Licensing Officer met the driver to discuss the telephone call. The driver said he had not heard the recording but walked in after the conversation between his father and the General Manager. He then had an argument with his father about the conversation. After being played the recording the driver remarked that he felt the General Manager had been incredibly professional. He pointed out that he did not know the person who allegedly had an affair with the General Manager and would have only been 12 years old at the time so could not have been a taxi driver. The driver said he had wanted to apologise to the General Manager but did not want to become involved in a dispute.

The driver confirmed that he had not instructed his father to call 24x7 Ltd, and although he wanted to work for them as he had been advised he would earn more money, he did not have the time to contact them as he worked six nights a week and when he wasn't working he was boxing. He was not aware that his dad had been licensed by the Council as during his childhood he often lived with his grandparents or in teenage hostels, but did now have a better

relationship with his parents. He added that his father could be an awkward person with a temper.

The driver added that he did not easily lose his temper as he taught boxing to disadvantaged children in Hackney. He also said during his time working for Stansted Airport Cars he had received no complaints and returning customers often asked for him.

The Enforcement Officer said the driver had been due to attend the extraordinary meeting on 15 September 2015, but the day before the meeting he was asked to cover a day shift due to staff sickness and couldn't attend as a result. The Committee resolved to defer the case until the meeting today.

The Enforcement Officer played the audio recording of the telephone conversation between the person who claimed to be the driver and the General Manager.

The Chairman invited the driver to speak. The driver said that he had been deeply embarrassed by the call and had not been speaking to his father as a result. His mother added that she had been devastated by the actions of her husband as they had put her son's livelihood at risk. She also had not been speaking to her husband as a result of the incident. The driver confirmed that he had intended to apologise to the General Manager but did not want to cause a scene at 24x7 Ltd's offices.

In response to questions by the Enforcement Officer, the driver said he did not know the man referred to in the telephone conversation, the General Manager, or the owner of 24x7 Ltd. The driver's mother confirmed she only knew the man as he went to the same school as her. Both the driver and his mother said the driver's father could be a very dominating person during a conversation and he could become aggressive.

The Enforcement Officer, the driver and the driver's mother left the room at 11.40am so the Committee could consider its decision. They returned at 11.45am.

DECISION

The Committee found that on the balance of probabilities the driver did not make the phone call and no further action was necessary.

LIC43

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

The Committee decided to determine the driver's licence in her absence.

The driver was currently licensed by the Council with her licence due to expire on 31 March 2016. On 8 October 2013, the driver was cautioned by the Assistant Chief Executive – Legal for failing to wear a private hire driver's badge under section 54(2) Local Government (Miscellaneous Provisions) Act 1976. At

the time any driver who received a caution was referred to the Committee for consideration, and on 19 November 2013 the case was heard. The Committee took no further action.

Drivers were required to renew their licenses with the Council annually. When the driver completed her renewal on 28 February 2014. The renewal form asked drivers whether they had 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 responded to this question by answering no. She submitted her DVLA counterpart licence on 5 March 2014. This revealed two fixed penalty notices, one from 2001 and one from 2006. The Council was already aware of both notices.

On 24 March 2015 the driver submitted her application to once again renew her private hire/hackney carriage driver's licence. She again responded to the question by declaring no. The Council, as part of the renewal process, carried out an online driver's check as the counterpart licence had since been abolished. This revealed an offence of using a mobile phone whilst driving on 5 September 2013, for which her licence was endorsed with three points and a fixed penalty notice for an offence of speeding in 14 October 2014.

The Council's licensing conditions required drivers to notify the Council of any convictions, cautions or fixed penalty notices within seven days. The driver had failed to do this and it was likely that the Assistant Chief Executive – Legal would have suspended the driver under delegated powers had the instance been a one-off.

The driver attended an interview under caution on 6 May 2015 at the Council Offices to discuss the offence of making a false statement in order to obtain a licence. The driver was shown her renewal from March 2015. She confirmed that she had signed it, but claimed her employer had completed two questions on her behalf. She had told her employer about the speeding offence but did not think she had to notify the Council. The driver was then interviewed about her failure to disclose the other fixed penalty notice on her 2014 renewal. The driver said that as the offence was committed in her private vehicle she did not think that she needed to disclose it

The Enforcement Officer said making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976. The Assistant Chief Executive – Legal had decided it was in the public interest to prosecute the driver for the offence of making a false statement in order to obtain a licence. The council was now statute time barred from pursuing a prosecution in respect of the 2014 renewal, so the prosecution was in relation to the 2015 renewal. As the driver now had a pending prosecution she fell below the Council's licensing standards. It was therefore up to Members to determine whether she remained a fit and proper person to hold a private hire driver's licence.

The Assistant Chief Executive – Legal said that if a driver did not meet the Council's licensing standards the burden of proof was on the driver to prove they were a fit and proper person to hold a private hire driver's licence.

DECISION

The driver is licensed by the council as a private hire/hackney carriage driver. She has held that licence for a number of years and her current licence is due to expire on the 31 March 2016.

On 8 October 2013 the driver was given a formal caution for an offence of failing to wear a private hire driver's badge when driving a private hire vehicle.

On 28 February 2014 the driver applied to renew her licence. One of the questions on the form is "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 by declaring "No". She supplied her DVLA counter-part licence which showed two fixed penalty notices which pre-dated her licence and of which the council was aware.

When applying to renew her licence this year, the driver again answered the same question "No".

The DVLA counter-part driver licence now having been abolished, the council carries out online driver checks when a licence is being renewed. The check received in respect of the driver showed that she received a fixed penalty notice for an offence of using a mobile phone on the 5 September 2013. She received a further fixed penalty notice for an offence of excess speed on the 14 October 2014.

The first offence would have been known to the driver when she applied to renew her licence in February 2014. She ought to have declared that fixed penalty notice then but she failed to do so. She therefore made a false statement with a view to obtaining a licence. The committee understands that the driver would normally have been prosecuted for this offence but that a prosecution is now statute barred. The driver made a further false statement to obtain a licence when she completed her application form for renewal in March of this year as she failed to disclose the fixed penalty notice which she received on the 14 October 2014. The driver is now being prosecuted for that offence.

Under section 61 Local Government (Miscellaneous Provisions) Act 1976 a council may suspend or revoke a licence on the grounds that since the grant of the licence the driver has been convicted of an offence involving dishonesty or an offence under the 1976 Act or for any other reasonable cause. The committee acknowledge that the driver has yet to be convicted of the offence. However, it is entitled to take into account the fact that it finds on the balance of probabilities that the offences had been committed. The offence of making a false statement to obtain a licence is an offence of dishonesty. It is a fundamental requirement that all drivers should be honest. The committee also note that this is the third offence in less than 3 years. In the circumstances, the committee are not satisfied that the driver is a fit and proper person and her licence will be revoked.

LIC44

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

The applicant had withdrawn their application.

The meeting ended at 12.05pm.