



Uttlesford District Council

Chief Executive: Dawn French

Licensing and Environmental Health

Date: Wednesday, 25 January 2017
Time: 19:30
Venue: Committee Room
Address: Council Offices, London Road, Saffron Walden, CB11 4ER

Members: Councillors R Chambers (Chairman), A Anjum, G Barker, J Davey, T Goddard, J Gordon, E Hicks, S Morris, J Parry

Public Speaking

At the start of the meeting there will be an opportunity of up to 15 minutes for members of the public to ask questions and make statements subject to having given notice by 12 noon two working days before the meeting.

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MEETINGS AND THE PUBLIC

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The agenda is split into two parts. Most of the business is dealt with in Part I which is open to the public. Part II includes items which may be discussed in the absence of the press or public, as they deal with information which is personal or sensitive for some other reason. You will be asked to leave the meeting before Part II items are discussed.

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Fax: 01799 510550

Email: uconnect@uttlesford.gov.uk

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**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 11 APRIL 2016**

Present: Councillor R Chambers (Chairman)
Councillors A Anjum and J Davey.

Officers in attendance: M Chamberlain (Enforcement Officer), J Jones
(Licensing Officer), C Nicholson (Solicitor) and A Rees
(Democratic and Electoral Services Officer).

Also Present: Barry Drinkwater (ULODA), Murray Hardy (24x7 Ltd), Andy
Mahoney (24x7 Ltd), Mr Novas, the complainant (Item 3), the complainant's
wife (Item 3), the driver in relation to item 3, the applicants in relation to items 5
and 6.

LIC83 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillor Goddard

**LIC84 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE – ITEM 2**

Councillor Chambers read out the procedures for determining private hire
licence applications.

The Enforcement Officer presented his report. Mr Novas held a private
hire/hackney carriage driver's licence, which had expired on 31 March 2016. On
8 April 2015 he was suspended by the Assistant Chief Executive – Legal for ten
days for failing to notify the Council of two fixed penalty notices within seven
days of them being issued.

On 26 June 2015, the Council was carrying out a police led stop check at
Stansted Airport. The Police initially dealt with Mr Novas' vehicle as a young
child was being carried on the lap of an adult. The Enforcement Team Leader
then inspected the vehicle and found that Mr Novas was not wearing his private
hire driver's badge, which was an offence under the Local Government
(Miscellaneous Provisions) Act 1976.

The Enforcement Officer said that in 10 December 2015 the Solicitor attended
Chelmsford Magistrates Court where Mr Novas pleaded not guilty. Mr Novas
had an interpreter who stated that as Mr Novas did not have an interpreter at
the interview under caution it should be discounted. He made no comment
regarding the signed statement which stated Mr Novas was not wearing his
badge. Mr Novas claimed he handed his badge to the Police at the first
checkpoint, so he did not have it whilst he was checked by officers.

The trial took place on 7 March where Mr Novas pleaded not guilty. Again he
had an interpreter. Mr Novas was found guilty and fined £90, ordered to pay a

victim surcharge of £20 and costs of £1000. The Magistrate's judgement stated that evidence related to the Interview Under Caution was excluded as Mr Novas did not understand the caution. They consider the Enforcement Team Leader to be a credible witness, but found Mr Novas unclear.

The Council's licensing standards stated that drivers must have a reasonable command of the English language sufficient to enable the driver to perform the functions of a hackney carriage/private hire driver.' As Mr Novas used an interpreter at Court it called into question his command of the English language. Mr Novas had been convicted of an offence which was not spent under the Rehabilitation of Offenders Act 1974 and therefore appeared before the Committee to determine whether he remained a fit and proper person to hold a licence.

The Chairman invited Mr Drinkwater to ask questions about the report. In response to his questions, the Solicitor said the starting point for a suspension was five days. Where there were aggravating factors a larger suspension would be considered. In the case of Mr Novas, the aggravating factor was that there were two fixed penalty notices which he did not declare. This meant there one was one ten day suspension, rather than two five day suspensions. The Committee could not go behind the facts of the conviction.

In response to further questions by Mr Drinkwater, the Chairman said it was up to the Committee to determine whether Mr Novas had sufficient command of the English language in order to perform his duties.

Mr Novas read out a statement. He explained that he really enjoyed his job and received many compliments from passengers. He was sorry for the conviction and normally always had his driver's badge on his belt. He struggled with legal English, but had a good command of English whilst carrying out his work and whilst in general conversation.

Mr Drinkwater then asked questions of Mr Novas who read the answers from a piece of paper. The Chairman said that the Committee needed to be satisfied that Mr Novas' command of English was sufficient to perform his duties as a private hire driver. It would be more beneficial if Mr Novas spoke without the aid of scripted answers.

Mr Novas gave his account of the incident surrounding the conviction. Initially he had been stopped by two Police officers, whom he gave his licence and paperwork to so they could perform their checks. He was then asked to move onto the second checkpoint which was manned by the Council's officers, who began to carry out a check of the vehicle. Whilst this was happening one of the Police officers told Mr Novas that there was an issue as the child passenger was sat on the lap of another passenger and not in a child seat. Once his office had been contacted and the issue resolved Mr Novas was given his paperwork back, which he placed on the dashboard. The Council's officers finished their inspection and gave Mr Novas paperwork to sign which he did, this included a notice for failing to wear his badge.

Mr Drinkwater asked questions of Mr Hardy who had been employed by the Council as a licensing officer and had been responsible for processing Mr Novas' application. In response to Mr Drinkwater's questions, Mr Hardy said he had interviewed Mr Novas when he had initially applied for a licence. At the time he had considered Mr Novas to have a good command of English. He had interviewed hundreds of people about private hire licence applications and had only encountered three or four who struggled with English.

Mr Mahoney spoke as a character reference for Mr Novas. Mr Novas had worked for 24x7 Ltd for three years and during that period he had never had any reason to question his work. He had personally received many compliments about Mr Novas from customers and other staff members. There were a number of customers who specifically requested that Mr Novas was their driver. Lastly, he had always been able to hold a conversation with Mr Novas and never had any trouble understanding him.

The Solicitor informed the Committee that where a driver did not meet licensing standards, the burden of proof was on the driver to satisfy the Committee they were a fit and proper person to hold a private hire licence.

The Chairman invited Mr Drinkwater to sum up Mr Novas' case. He said that the Council's licensing policy was not binding and exceptions could be made in appropriate circumstances. The failure to disclose the two fixed penalty notices was not a deliberate act of concealment. Mr Novas' general English was good, but he struggled to understand legal English. This was at the other end of the spectrum and an allowance should be made for this. Mr Novas had wished to appeal the Magistrate's finding but had been able to afford to. Lastly, the fine Mr Novas received was at the lower end of the scale.

The Enforcement Officer, the Licensing Officer, Mr Drinkwater, Mr Hardy, Mr Mahoney and Mr Novas left the room at 10.55am so the Committee could consider its decision. They returned at 11.10am.

LIC85

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.

DECISION

Mr Novas has a joint private hire/hackney carriage driver's licence which is up for renewal. We have heard how Mr Novas has received a conviction for failing to wear his badge, a conviction that the committee is not in a position to reopen. As a result of his conviction, and his time in court, his command of English and whether it is sufficient for the purposes of his job has also been questioned. As a result of both of these issues, Mr Novas does not meet the Council's licensing standards.

Where an applicant does not meet licensing standards it is for the applicant to make their case that the council should depart from its policy. Essentially the applicant must demonstrate that notwithstanding the fact that he fails to meet the council's licensing policy he is a fit and proper person. In addition in this case, Mr Novas also needed to satisfy members that his command of English was sufficient to enable him to perform the functions of a driver.

In considering convictions the committee must have regard to a number of factors. These are

1. the nature of the offence
2. the severity of the offence
3. the length or severity of the sentence.

Members have heard the circumstances around the commission of the offence, and the mitigating factors, and have noted the low level of fine the Magistrates gave Mr Novas.

Members have also heard Mr Novas speak comfortably today in support of his application.

In all the circumstances, Members are satisfied that Mr Novas is a fit and proper person, and that he has reasonable command of the English Language. Mr Novas will be granted his driver's licence.

LIC86

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

The Chairman read out the procedures for determining private hire licences..

The Enforcement Officer presented the report. The driver held a private hire/hackney carriage driver's licence which was first granted by the Council on 23 February 2010 and due to expire on 28 February 2019. He carried out school contract work for 24 x 7 Ltd.

On 15 March 2016 the Council received a complaint from the complainant, who reported that his wife had been sworn at and threatened by a licensed driver. The driver was then summoned to the offices of 24 x 7 Ltd regarding the complaint. The driver had been carrying a boy with special needs from Takeley to Harlow. The driver had been travelling towards Hatfield Heath on a road which was the national speed limit, before going down to 40mph on the outskirts of the village and 30mph just before the old police station. The driver says a vehicle attempted to overtake him at speed in the 30mph zone but couldn't due to oncoming traffic. The driver he turned left and then right on Sheering Road and says the complainant's wife tried to overtake him again. The driver said he feared for his passenger's safety so he stopped his vehicle and went to the rear of his vehicle. He claimed that the complainant's wife began swearing at him and then drove her vehicle at him which meant he had to jump out of the way. As she drove past him she nearly collided with another

vehicle and it was at this point he noticed there was a baby in his car. He composed himself before continuing with his journey.

24 x 7Ltd said no further action was being taken by the company against the driver and a complaint had been made to the complainant's wife for the following offences; dangerous driving, careless driving, excess speed and attempted grievous bodily harm with a motor vehicle.

The Enforcement Officer explained that the complainant's wife lived in the Ongar area and drove to Harlow before getting the train to London for work. She had been driving her usual route and turned onto Sheering Road. The traffic had been slow and the car in front abruptly performed an emergency stop, which forced her to. Initially she thought there was an issue with the vehicle in front, but the driver then exited his vehicle and begun swearing at her. She said the driver attempted to open her door but the car doors automatically locked. It was at this point she noticed the vehicle was a licensed vehicle. The driver continued shouting at her, but did not open her windows as she felt he may have attacked her. Her children were not in the vehicle but there were two baby seats in the rear of the vehicle. She says that as the driver walked back to her vehicle she attempted to overtake his vehicle giving him a wide berth. There was no need for her to reverse and there was no oncoming traffic. After driving off she pulled into a layby for a few seconds but felt she couldn't stay in case the driver confronted her.

When she arrived at her Harlow train station she contacted her husband. Both of them reported the incident to the Police. The complainant's wife also initially reported the incident with Transport for London. She said that a licenced driver should never behave as the driver had done and would never overtake unless on a dual carriageway or motorway.

The Enforcement Officer said that the complainant's wife have provided an email that she had received from the Police which stated that they were investigating the matter, as well as notes that she had made of the incident. In light of the complaint the driver appeared before the Committee in order to determine whether he remained a fit and proper person to hold a private hire driver's licence.

The complainant's wife said she had a child who had special needs and always ensured that she drove carefully as a result. She would have expected the child in the driver's car to be in the back, rather than the front, in order to prevent the child from becoming agitated. She also expected a passenger assistant to be present in the vehicle.

She then questioned why the driver had left the vehicle if he was concerned about the child's safety. Furthermore, how was the driver aware of his passenger's emotional state if he had left the vehicle.

Mr Hardy said that the County Council carried out a risk assessment of every school contract and had considered that a passenger assistant was not needed in this instance.

The driver then presented his account of the incident. He began by saying that the passenger sat in the front seat of the car at the request his mother. He took the same route to and from the school each day, except for instances where temporary traffic lights were in place and the alternate route was faster. At the point Sheering Road became a 40mph speed limit, down from a 60mph limit, he noticed a vehicle approaching his vehicle at speed, which then began tailgating his vehicle. His passenger had noticed the vehicle behind and asked why the vehicle was so travelling so close to the driver's car. Eventually the vehicle attempted to undertake his, which forced to veer off to avoid a collision. It was as this point his passenger became distressed so he pulled over to calm down his passenger, compose himself and allow the vehicle to overtake him.

The driver said that the vehicle did not attempt to overtake him and instead the complainant's wife began sounding the vehicle's horn. He exited his vehicle and motioned to the vehicle to overtake. At no point did he force entry to her vehicle. She revved the vehicle's engine and the vehicle leapt forwards, which forced him to take evasive action. She then attempted to overtake his vehicle which forced the oncoming vehicle to slow down. It was not possible for the complainant's wife to have seen his vehicle later in the journey as his route was different. The day after the incident his mother thanked him for his actions.

In response to questions by the Enforcement Officer, the driver said that he pulled over initially, but felt the need to exit his vehicle in order to motion that the vehicle should overtake him. He did speak to her through her windscreen but it would not have been possible to hear what he said. He needed to pull the vehicle over to check the vehicle as it had collided with the kerb when he had to avoid a collision. He could see a baby seat in the back of her car, but it was enclosed and he couldn't see whether a child was on board. He reported the incident on the time it had occurred, but the Police had not been able to progress the investigation because he did not have the vehicle's registration number.

The Solicitor told the Committee they had to, in the first instance, determine which version of events they preferred. They would then have to consider what action, if any, should be taken.

Mr Hardy said there were inconsistencies in both accounts of events. The Council had to be satisfied that the driver no longer was a fit and proper person to hold a private hire driver's licence. This was the only incident during the six years the driver had had been licensed. Members also needed to give regard to the Attorney General's guidelines. There was no independent evidence apart from the corroboration of the boy's mother.

In response to points by the complainant, the Solicitor said that if the driver was convicted he would fall below the Council's licensing standards. The Committee had to determine on the balance of probabilities which account they preferred.

The Enforcement Officer, the Licensing Officer, Mr Hardy, the driver, the complainant and the complainant's wife left at 12.05pm so the Committee could consider its decision. They returned at 1.05pm.

DECISION

The driver currently holds a private hire licence, which was first granted in February 2010. He currently drives for 24x7 Limited and carries out school contract work.

The Council were made aware of an incident involving the driver when the complainant contacted the Council on behalf of his wife, who had encountered the driver on one of his school journeys, with a vulnerable passenger.

The complainant's wife has stated in her complaint that the driver stopped his car suddenly, got out of his car, and confronted her, and swore at her, was aggressive and made her feel scared and upset. The complainant's wife was here today in support of her complaint, along with her husband.

The driver has explained his version of events, which differ from those of the complainant's wife, particularly in terms of why he stopped his vehicle, what happened when the vehicle was stopped, and the nature of the confrontation between the two.

What is accepted by both parties is that the driver did stop the vehicle in the road, and that he did get out of his vehicle to speak to the complainant's wife and there was a confrontation, and words were exchanged through a window. Members need to consider whether as a result of this complaint, and the details of the incident make the driver no longer a fit and proper person to hold a licence.

Members have made no finding in respect of which version of events they prefer, as they consider that in any event the driver's behaviour in this incident was not appropriate for a licensed driver, when he was carrying a vulnerable passenger, as Members consider that he should not have got out of his car, left his passenger and gone to confront the complainant's wife, particularly as the driver has already explained that his passenger was upset and distressed.

In this case the burden on proof is on the Council to show that he is not a fit and proper person to hold a licence. Members have taken account of his previously unblemished record as a driver and the testimony from his employer, and his passenger's parent, in terms of his general manner and behaviour. Members are not satisfied that he is not a fit and proper person to hold a licence as a result of this incident.

However, Members consider that this behaviour does warrant a sanction as a mark of disapproval of the driver's conduct and as a deterrent to others, and that in the circumstances a suspension of the licence would be appropriate. In considering the length of the suspension Members can take into account the driver's past history, the seriousness of the complaint, and any other aggravating or mitigating factor, and the financial effect of any suspension upon the driver.

Members are aware that the driver is a school contracts driver, and in that regard he should have taken more responsible actions. However he has a good history as a driver, and has had positive comments from his regular passenger, and in this case therefore members consider that a 5 day suspension is the appropriate sanction.

The driver has the right to appeal against this decision within 21 days to the Magistrates' court.

LIC87

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

The Chairman read out the procedures for determining private hire licences.

The Enforcement Officer presented his report. The applicant had applied for a private hire/hackney carriage driver's licence on 27 January 2016. As part of the application applicants were asked whether they had been endorsed for a fixed penalty notice offence within the last four years. The applicant gave his answer as "no".

The Council had to obtain an enhanced DBS check for each applicant. For the applicant this revealed no convictions. The Council also carried out an online driver check from DVLA records. The check for the applicant was carried out on 29 January 2016. This revealed that he had received a fixed penalty notice for a CU80 (using a mobile phone whilst driving) on 1 March 2012. His licence was endorsed with penalty points.

The Enforcement Officer explained that fixed penalty notices ceased to be counted after three years but were not completely removed from a driver's record for four years. Making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000 upon conviction.

The applicant attended the Council Offices for an Interview Under Caution to discuss the allegation of making a false statement to obtain a licence. The applicant explained that he was employed by Connections Limited T/A Fargolink carrying out school contract work and had recently been licenced by Braintree District Council. There had been no issues with his application. He wanted to be licenced by Uttlesford to enable him to work full time. The applicant said he had read the form and supplied answers to a lady who worked at the Fargolink office. He was not sure whether he had any points on his licence so he checked the DVLA website. This showed he had no points. He assumed this was correct and therefore answered "no" on the application form.

The Enforcement Officer said that on 5 February 2016 he received an email from Fargolink link which explained that the applicant struggles to read or write and that someone in the office had filled out the form for him. The applicant had not set out to deliberately deceive the Council. Fargolink supplied a licence check for the applicant dated 8 January 2016, which showed no current penalty points but did show the CU80 although it stated that it expired on 1 March 2015.

The applicant was aware that an online driver check was being carried out and should have realised the fixed penalty notice would come to the Council's attention. The Assistant Chief Executive – Legal did not consider a prosecution to be in the public interest, but did choose to issue the applicant with a caution for the offence of making a false statement to obtain a licence. The applicant did meet the Council's licensing standards but the Assistant Chief Executive – Legal did not wish to grant the licence under delegated powers.

The Chairman invited the applicant to speak. The applicant said he had made a mistake and not a deliberate act of concealment. He had checked his licence online and saw the part of the webpage which stated he had zero penalty points, he did not see the part below which said the offence was not completely void. He had dyslexia, but it was sporadic. This meant there were times when he had no trouble reading, but others where he struggled.

The Enforcement Officer, the Licensing Officer and the applicant left the room at 1.25pm so the Committee could consider its decision. They returned at 1.30pm.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence.

On his application form he answered no to the question 11 'has your licence even been endorsed for a fixed penalty notice offence in the last 4 years'. However, the online check of his DVLA driver's licence revealed an offence in March 2012, which although no longer relevant under the totting up provisions, remain on the licence for 4 years. His application was made in January 2016, so the Fixed Penalty Notice conviction was still within the 4 years. The Assistant Chief Executive – Legal decided as a result of this inaccuracy on the application form to issue a caution for making a false statement.

The applicant meets the Council's licensing standards, but as result of his caution, the Assistant Chief Executive – Legal wanted the licence application to be considered by members. It is for members to decide whether the applicant is a fit and proper person to have a licence. The applicant advises that his mistake was genuine and as a result of a misapprehension of the question and the timescales. It is noted that in fact the form was filled in by his intended employer to whom the applicant supplied his answers.

Mention has been made of difficulty in reading or writing, but the applicant has confirmed that he has dyslexia which sometime affects his reading and comprehension.

In the circumstances, members are satisfied that the applicant is a fit and proper person. The applicant will be granted a driver's licence.

LICENCE – ITEM 6

The Chairman read out the procedures for determining private hire licences. CCTV footage of the incident was played to the Committee.

The Enforcement Officer presented his report. The applicant applied for a private hire/hackney carriage driver's licence on 13 January 2016. He passed his medical, had a clean driving licence and declared a previous conviction. The applicant intended to work for Uber.

On 26 February 2016 the Council received an email from one of the managers at Takeley Performance Tyres which were approved by the Council to carry out vehicle inspections on its behalf. The Manager said they attempted to carry out an inspection of the applicant's vehicle on 22 February 2016. As the mechanic pointed out problems with the vehicle, the applicant became aggressive, swore and pushed the mechanic before driving off.

The Company had supplied CCTV footage which showed the mechanic carrying out an exterior check of the vehicle. The applicant appeared to bend down to view the problems pointed out by the mechanic before using his mobile phone. As the mechanic entered the front offside door, the applicant barged him out of the way before getting in the vehicle and driving off.

The Enforcement Officer said that he visited Takeley Performance Tyres on 4 March 2016 and the mechanic who carried out the exterior check and another mechanic who was present at the test. The first mechanic explained that he was highly experienced and was DVSA approved to carry out MOT testing. He explained that as he began the test he told the applicant he did not believe there were enough no smoking stickers and pointed out damage to the bodywork of the vehicle. The applicant insisted that the vehicle was good and when problems on the bodywork were pointed out made spitting noises. The mechanic did not see the applicant spit. The mechanic said that he opened the door and attempted to read the odometer but the applicant pushed past him and covered it up with his mobile phone. The mechanic said he did not confront the applicant or swear at him and allowed him to drive off.

The second mechanic said he was working on another vehicle but heard the applicant raising his voice. He saw the applicant bending over and making spitting noises and saw the first mechanic attempting to enter the vehicle before he was pushed out of the way by the applicant who got into the vehicle and drove off.

The applicant stated that he had been living in the UK for 20 years and wanted to work for Uber who were licensed by the Council. He picked Takeley Performance Tyres as they were closest to where he lived, although when he arrived at the garage he did not feel it looked like a garage. The applicant claimed the first thing the mechanic did when he was handed the keys was tell him the vehicle was going to fail because there were not enough no smoking stickers in the car. The applicant says that because the mechanic swore and shouted he became angry and asked for the keys back which the mechanic refused to do because he was testing the vehicle. The applicant claimed that he

never swore at the mechanic, no exterior check was carried out, he never left the vehicle whilst it was in the garage, didn't spit at the mechanic and didn't push him out of the way. The applicant said the mechanic never opened the door to look at the odometer but he did cover up the odometer with his mobile phone when the mechanic peered through the car window as he didn't want the mechanic carrying out the test. The applicant said he was shocked that the mechanic swore at him and told the Enforcement Officer that the mechanic must have mental problems.

The Enforcement Officer explained that the applicant then said he phoned the Council's licensing department to explain he wanted to go to T and R Autos instead. He asked them to just check over the vehicle and not carry out a test which they did. When they did test the vehicle it failed for a number of reasons. The applicant explained that he had held a TfL licence working for Uber since 2014 but had not worked for four to five months as he was caring for his son.

The applicant did meet the Council's licensing standards but due to the complaint, the Assistant Chief Executive – Legal had referred the matter to the Committee.

The Chairman invited the applicant to speak. He said that he had never sworn at the mechanic and did not push him. He only took the keys for the car back as he did not want the mechanic carrying out the test.

He wanted to be licenced by the Council in order to help care for his son who was very ill. He had carried out work in London and Harlow previously, but had decided that he wanted to be licensed by Uttlesford. He had chosen T and R Autos to carry out the vehicle check as they were the closest to his property.

The Enforcement Officer, the Licensing officer and the applicant left the room at 1.50pm so the Committee could consider its decision. They returned at 1.55pm.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence.

The applicant meets the Council's licensing standards, but whilst his application with the Council was progressing, the Council received details of an incident that had occurred when the applicant had taken his vehicle to be tested by one of the Council's authorised garages.

The applicant made a complaint about the garage that he took his vehicle to for testing, and when asked for their account, the mechanic from the garage alleges that the applicant swore at him, made spitting noises, and pushed him when he tried to take the mileage from the odometer.

As a result of this complaint, the Assistant Chief Executive – Legal wanted the licence application to be considered by members. It is for members to decide whether the applicant is a fit and proper person to have a licence.

The applicant's account of the incident differs from that of the mechanics. He claims he gave the key to the mechanic, but stayed in his vehicle the whole time, that the mechanic did not do an exterior check, and therefore he did not abuse or push the mechanic. The CCTV shows that Mr Ahmadi did get out of the vehicle, and look round it initially with the mechanic. It is not possible from the CCTV to determine who, if anyone, swore at who. However, from the footage that Members have seen today they do not agree that the applicant pushed the mechanic or appeared to be particularly aggressive when he got back into his car to end the test.

Despite the inconsistencies in the recollection of the applicant of the event, the applicant has explained before the Committee today that he was sworn at by the mechanic, who was from the outset dismissive of the state of his vehicle, and that he did not expect to be faced with such an attitude. He had no problems when he took his vehicle elsewhere, even though it did fail the test.

Members do not consider that the actual events of that day are serious enough to result in the applicant being considered not fit and proper to hold a licence. In the circumstances, members are satisfied that the applicant is a fit and proper person and the applicant will be granted a driver's licence.

LIC89

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

The Licensing Officer informed the Committee that the applicant had emailed her explaining that he could not attend the meeting, but hoped the Committee would determine his licence in his absence

The Licensing Officer presented her report. The applicant applied for a licence on 3 March 2016. On the application form applicants were asked to disclose all convictions, both spent and unspent, as well as any police cautions. The applicant disclosed nine convictions for offences between 1974 and 1990.

The Council obtained an enhanced DBS check for each applicant. In respect of the applicant, this revealed the nine convictions he disclosed. These were; theft of a vehicle for which he was given a two year supervision order, ordered to pay compensation of £20, and his licence endorsed in February 1974; Burglary and Theft of a Non-Dwelling, breaching the supervision order, and taking Conveyance Without Authority for which he was fined £15, ordered to pay compensation of £2, his licence was endorsed, and he was ordered to continue his supervision order in March 1974; numerous offences under the Theft Act for which he was sentenced to six months in a detention in March 1976; taking a motor vehicle without consent and two offences under the Road Traffic Act 1976 for which was disqualified from driving in November 1976; driving whilst disqualified and without insurance for which he was fined and given a three month suspended prison sentence in February 1977; Theft, taking a vehicle without consent and several offences under the Road Traffic Act for which he was given a custodial sentence in April 1977; driving whilst disqualified, without insurance and for theft for which he received a six month suspended prison sentence and had his licence endorsed in January 1979; Assault Occasioning

Actual Bodily Harm for which he received a conditional discharge in April 1983; two counts of Assault Occasioning Actual Bodily Harm for which he was given a conditional discharge, ordered to pay compensation of £675 and costs of £100 in August 1990.

The Licensing Officer said that although all the convictions were spent under the Rehabilitation of Offenders Act 1974, the applicant did not meet the Council's Licensing Standards said that 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 applicant was interviewed by the Licensing Officer on 17 March 2016 where he was asked about the circumstances surrounding his convictions in 1976 and 1977. The applicant explained that he had got into the wrong crowd. The offence in March 1976 related to an incident where 13 people had broken into a factory to steal paint and cars to joyride in. The conviction in April 1977 was for theft of a tax disk which the applicant had altered to match his own vehicle. He had also been convicted for taking a vehicle without consent. The vehicle was a friend's but he said he had taken it without consent to avoid his friend getting into trouble.

After he had left prison in 1978 he moved from Hertford to Stevenage with his parents. This allowed him to try and make a fresh start. He married in 1979 and had a son. He had no convictions since 1990 and had been licenced as a taxi driver in Stevenage for 25 years and had previously been licenced by East Cambridgeshire. He had spent a lot of time carrying out school contract works. The applicant was currently employed by Diamond Cars and the operator wanted him to be licenced by Uttlesford so he could drive vehicles they had licenced with the Council.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. On his application form he disclosed a number of convictions details of which are set out in the officer's report. The convictions were mainly for offences of dishonesty. In respect of these offences he received a range of punishments including custodial sentences. By virtue of the custodial sentences for offences of dishonesty the applicant does not meet the council's licensing standards.

Where an applicant does not meet licensing standards it is for the applicant to make their case that the council should depart from its policy. Essentially the applicant must demonstrate that notwithstanding the fact that he fails to meet the council's licensing policy he is a fit and proper person.

Members note that the offences were all at the lower end of the scale. In general the nature of the sentences imposed were not severe. The committee also note that the last offence was 25 years ago and that the applicant has had no convictions of any nature since. In the circumstances, members are satisfied that the applicant is a fit and proper person and that it is therefore

appropriate to make a departure from its policy. The applicant will be granted a driver's licence.

The meeting ended at 2pm.

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 7.30pm on 20
APRIL 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey, T Goddard, J Gordon, E Hicks and S Morris.

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

Also Present: Les Davidson (Treasurer – ULODA) and Barry Drinkwater (Joint Vice-Chairman – ULODA).

PUBLIC SPEAKING

The Chairman invited Mr Davidson and Mr Drinkwater to speak on behalf of ULODA.

Mr Drinkwater stated that the focus of ULODA's statement was enforcement. The Scrutiny Committee had appointed a task group to review the Council's enforcement practices. The Trade had given a statement to the Scrutiny Committee on 9 February.

Mr Davidson presented a summarised version of the statement given to the Scrutiny Committee.

Mr Drinkwater updated the Committee on the Enforcement Task Group's progress since 9 February. There had been no update at the Scrutiny Committee meeting on 15 March as the Task Group had not been able to meet during that period, but at the meeting the Assistant Director Corporate Services did reiterate that the Trade wanted to be involved in the review.

The Trade had looked at enforcement trends since the adoption of the Licensing Policy. The Assistant Chief Executive – Legal had produced ten reports to the Committee since the adoption of the Policy. The first six of these dealt almost exclusively with drivers and operators dealt with under delegated powers. The later reports included prosecutions and any cautions which had been administered. The Assistant Chief Executive – Legal had dealt with 111 drivers since April 2013, the vast majority of which were for failing to disclose a fixed penalty notice. The Trade welcomed the opportunity to examine the figures in more detail and explore the effectiveness of enforcement action in light of the objectives of the Policy.

Mr Drinkwater said that the Trade would be sharing this information with the task group. The Trade was happy that the Committee listened to the concerns of the Trade. Members may want to set up a licensing task group to review the effectiveness of the Policy, including the use of officers' time in education and enforcement.

In response to a question by Councillor Gordon, the Assistant Chief Executive – Legal said that there were some drivers who he had taken no action against following a breach of the licensing conditions. The starting point for a suspension after failing to notify the Council of a fixed penalty notice had been increased from three days to five days. Following this there had been no reoffenders. During the period which three day suspensions were the starting point, a number of operators rearranged the driver's shifts so that they were not penalised by the suspension. This meant that there was effectively no punishment.

The Chairman thanked Mr Drinkwater and Mr Davidson for their statement.

LIC90 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

Apologies for absence were received from Councillor G Barker.

Councillor Morris declared non-pecuniary interests in the item which the Assistant Chief Executive – Legal asked the Chairman to consider as urgent business as a member of Saffron Walden Town Council, and as a member of the Town Hall's redevelopment committee.

LIC91 **MINUTES OF PREVIOUS MEETINGS**

The minutes of the meetings held on 20 January, 28 January and 2 March 2016 were received and signed by the Chairman as a correct record.

LIC92 **MATTERS ARISING**

The Assistant Chief Executive – Legal said that no appeals had been lodged with respect of any of the private hire driver's licences which had been suspended or revoked by the Committee.

LIC93 **ENFORCEMENT**

The Assistant Chief Executive – Legal presented his report which provided an update on enforcement action taken since the last ordinary meeting of the Committee. The report was prepared on 17 March and did not cover matters which had arisen after that date.

He had dealt with 10 drivers under his delegated powers between 20 January and 17 March 2016. Three were suspended with immediate effect in the interest of public safety as they had medical conditions which made them unfit to drive. The suspensions would be lifted once the drivers produced certificates showing that they met Group 2 medical standards.

Five drivers had been suspended for failing to disclose fixed penalty notices. Two of the drivers were suspended for two days because they volunteered the

information on renewal and a longer suspension would have caused undue financial hardship. One driver was suspended for three days. He also volunteered the information on renewal but had failed to disclose two penalty notices. Two drivers were suspended for five days for failing to disclose a fixed penalty notice as there were no aggravating or mitigating factors.

The Assistant Chief Executive – Legal said one driver had been suspended for five days for failing to disclose a motoring conviction. There were no aggravating or mitigating factors.

Lastly, one driver was suspended for seven days for careless driving and poor behaviour. If he had been prosecuted, he would have been convicted. The aggravating factors were that he swore at a member of the public and refused to attend to meetings with the Assistant Chief Executive – Legal.

The Enforcement Team had prosecuted four drivers since the last committee meeting. Two of these were for making a false statement to obtain a licence, one was for failing to wear his private hire driver's badge and the fourth was for failing to display "No Smoking" stickers in his licenced vehicle.

One further driver had been cautioned for the offence of making a false statement to obtain a licence where a prosecution was not warranted.

The Assistant Chief Executive – Legal explained that he had been on leave since the preparation of the report. During this time officers had suspended three drivers. One had been suspended with immediate effect in the interest of public safety as he was facing a charge of domestic violence. One had been suspended for five days for failing to disclose a fixed penalty notice. The other driver had been suspended for seven days for failing to disclose a fixed penalty notice. The aggravating factor in this instance was that the driver refused to attend an interview.

The Assistant Chief Executive – Legal said that the applicant in minute LIC82 had been found guilty in the Magistrates' Court of making a false statement in order to obtain a licence. She had been ordered to pay fines and costs which totalled around £700. It was important that operators did not fill in application forms on behalf of applicants and ensured that the applicant filled out the form correctly. They could wait until they had received a copy of the enhanced DBS check if necessary.

Normally when a false statement was made, if the omitted convictions had been declared on the application form, the applicant would have met the Council's licensing standards and would have been granted a licence under delegated powers. The Committee often refused applications from applicants who were being prosecuted for the offence of making a false statement in order to obtain a licence so it was beneficial to operators to ensure that applicants completed their application forms correctly.

The Assistant Chief Executive – Legal said the majority of suspensions administered by him were for failing to disclose fixed penalty notices. If a driver

was caught speeding by a fixed speed camera, the notice would automatically be sent to the proprietor of the vehicle which in most instances was the operator. He had asked operators when they receive notification of a fixed penalty notice, to ensure the driver was aware of the need to notify the Council that they had received the notice within seven days.

Most operators informed drivers in writing that they had received a penalty notice and he had drafted a paragraph for operators to include in their letters. One operator was reluctant to do this, but it was in the interests of the operator to ensure that drivers notified the Council, because if the driver was suspended then the operator could not use the driver during the period of the suspension.

The report was noted.

LIC94

URGENT BUSINESS

The Assistant Chief Executive – Legal asked the Committee to consider the report regarding the location of the taxi rank in Saffron Walden as a matter of urgency. The matter was urgent because works to Saffron Walden Town Hall meant the current taxi rank in Saffron Walden could not remain in its current place. If no decision was made then Saffron Walden would not have a taxi rank throughout the time works were taking place on the Town Hall.

The Council had been notified that essential repair works would be carried out on Saffron Walden Town Hall for six months during the spring and summer of 2016. Whilst works were being carried out scaffolding would project onto the road requiring the closure of the current rank.

It was proposed that during the six month period that the rank was relocated to outside of the “Starbucks” which occupied 1-6 Market Street. The relocated rank would be the same size as the current one and Market Street would become a one-way street during the period. Essex Highways, Saffron Walden Town Council and ULODA had all been consulted and were happy with the proposals.

The Assistant Chief Executive – Legal said that an email had been circulated on 11 March to all Hackney Carriage Proprietors advising them of the closure and requesting suggestions for other locations. Three responses were received, two from Hackney Carriage Proprietors, and one from ULODA. This suggested that the Stand was moved to outside of 2 and 3 Market Street. However, Essex Highways were not in favour of that option because the rank would finish too close to Market Hill Road. There were also safety concerns as emergency and delivery vehicles would have difficulty turning out of Market Row.

It was recommended that a statutory consultation took place on relocating the taxi rank to outside 1-6 Market Street, with the Assistant Chief Executive – Legal being given delegated authority to designate the relocated rank provided there were no adverse responses to the consultation.

Members considered the report and agreed to its recommendations.

The Assistant Chief Executive - Legal asked that the Trade provided feedback about the interim arrangement to see whether it would be desirable on a permanent basis.

The Chairman thanked Mr Drinkwater, Mr Davidson, the Trade, the Assistant Chief Executive – Legal, officers and Members for their support throughout the year.

RESOLVED that:

1. Officers would publish a statutory consultation which would allow the Saffron Walden taxi rank to be relocated from outside 1A Market Street to 1-6 Market Street for a 6 month period whilst urgent repair work is being carried out to the Saffron Walden Town Hall.
2. That unless there are any adverse responses to the consultation the Assistant Chief Executive – Legal shall have delegated authority to designate the relocated rank as a hackney carriage stand under s.63 Local Government (Miscellaneous Provisions) Act 1976.

The meeting ended at 7.55pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 23 MAY 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey and J Parry.

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

Also Present: Mr Bridge (The Operator’s licensing consultant – Item 2), Mr Emin
(The Operator – Item 2), the applicants in relation to Items 3, 4, 5
and 6.

LIC1 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

*The Committee resolved to determine Item 2 last and to determine Items 5 and
6 simultaneously.*

LIC2 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.

**LIC3 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER’S
LICENCE – ITEM 3**

The Chairman read out the procedures for determining private hire/hackney
carriage driver’s licences.

The Enforcement Officer presented his report. The applicant had made an
application for a licence on 21 January 2016. One of the questions asked
whether the applicant had received a fixed penalty notice within the last four
years. The applicant disclosed an SP30 offence.

The Council was required to carry out an online driver check as part of the
application process. The check was carried out on 1 February 2013. This
revealed the SP30 offence, but also revealed that he had received three penalty
points for an SP50 offence. Making a false statement to obtain a licence was an
offence under the Local Government (Miscellaneous Provisions) Act 1976.

The Enforcement Officer said that on 8 March 2016, the Council received an
email from Fargolink which explained that when the applicant filled in his

application form, he had left the convictions section blank so the operator could carry out an online check. The operator had not done this.

On 9 March 2016 the applicant attended the Council Offices for an Interview Under Caution. The applicant explained that he recalled the SP50 offence but believed it to be the SP30 offence which he referred to on his application form. Whilst he was filling out the form he did not have the full details of his penalty points so he left the form for an employee of the company to complete. He admitted that a mistake had been made and that ultimately it was his fault.

The applicant was aware that an online check was being carried out and ought to have realised that the fixed penalty notice would come to the Council's attention. The Assistant Chief Executive – Legal did not believe that a prosecution was in the public interest, but did issue the applicant with a caution for the offence of making a false statement to obtain a licence. The applicant did meet the Council's licensing standards but the Assistant Chief Executive – Legal had declined to grant the licence under delegated powers.

The Chairman invited the applicant to speak. He explained that the operator had said they would fill in the convictions section of his application form, but hadn't. This was a genuine error and ultimately he took responsibility.

The Enforcement Officer and the applicant left the room at 2.10pm so the Committee could consider its decision. They returned at 2.15pm.

DECISION

The applicant applied the council for the grant of a joint private hire/hackney carriage driver's licence. On the application form there is a question asking whether the applicant's licence has been endorsed with a Fixed Penalty Notice within the last 4 years. The applicant answered this by stating that he had 3 penalty points for an SP30 offence (excess speed). During the application process the council carried out an online driver check from DVLA records. In the applicant's case this revealed an SP30 offence on 21 August 2013 for which he was endorsed with 3 points and also 3 points for an SP50 (speeding on a motorway) on 16 April 2015. Making a false statement to obtain a licence is an offence in respect of which the applicant was given a formal council caution.

The applicant's operator sent an email to the council in which he explained that when the applicant filled in the application form he did not have details of his convictions with him. The operator said he would get them from the DVLA report and add them in but he had not done so. The applicant was clearly reckless in allowing the operator to complete the form on his behalf after he had signed it. However, members are satisfied that the applicant did not intend to deliberately deceive the council. The committee are satisfied that the applicant is a fit and proper person and his licence will therefore be granted.

LIC4

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

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented his report. The applicant had applied to renew his licence on 1 April 2016. The renewal form asked drivers '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 applicant answered this question by saying "no".

The Council was required to carry out an online driver check and the applicant's records showed that he had received a fixed penalty notice for an SP50 offence on 29 June 2015. The applicant had breached condition 18c of his licensing conditions as he had failed to notify the Council within seven days that he had received a fixed penalty notice. Making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

The Enforcement Officer said that on 8 April 2016 the applicant attended the Council Offices for an Interview Under Caution. The applicant explained that he believed the offence had taken place over a year ago, and that it had been dealt with by way of a driver improvement course so he did not know he had points for the offence.

The applicant was aware that an online check was being carried out and ought to have realised that the fixed penalty notice would come to the Council's attention. The Assistant Chief Executive – Legal did not believe that a prosecution was in the public interest, but did issue the applicant with a caution for the offence of making a false statement to obtain a licence. The applicant did meet the Council's licensing standards but the Assistant Chief Executive – Legal had declined to renew the licence under delegated powers.

The Chairman invited the applicant to speak. The applicant explained that he didn't intentionally make a false statement. He had genuinely believed that the offence had taken place over 12 months ago, and as he had taken a driver improvement course did not think they he had received any penalty points. Therefore, he hadn't felt that the offence needed to be disclosed.

The Assistant Chief Executive – Legal advised that normally when a driver failed to notify the Council of a fixed penalty notice within seven days, they were suspended. The applicant's licence had lapsed since the application to renew his licence had been made and he had not been able to drive since then. A suspension would no longer be appropriate in the circumstances.

The Enforcement Officer and the applicant left the room at 2.20pm so the Committee could consider its decision. They returned at 2.25pm.

DECISION

The applicant was licensed by this council as a joint private hire /hackney carriage driver in April 2014. His licence was renewed in April 2015. He applied to renew the licence again in April this year.

One of the questions on the renewal form asks whether in the last year the driver has been issued with a Fixed Penalty Notice. The applicant answered that question "No". The council carried out a driver check from DVLA records and this showed that the applicant received a Fixed Penalty Notice for an SP50 offence (speeding on a motorway) on 29 June 2015. His licence was endorsed with 3 penalty points. This was a breach of condition 18C of the conditions attached to his private hire driver's licence which required him to notify the council within 7 days of receiving any fixed penalty notice.

Making a false statement to obtain a licence is an offence under the Local Government (Miscellaneous Provisions) Act. The applicant stated that he believed that his speeding offence took place more than a year ago so that he did not need to refer to it in response to the question on the renewal form. He also maintained that he did not know he had points for the offence believing it had been dealt with by way of a driver improvement course. The committee regard that as being highly implausible.

The applicant was not prosecuted for the offence but received a formal council caution. Members do accept however, that the applicant may have been confused with regard to the date of the offence and fixed penalty notice and accept that he did not therefore deliberately try to deceive the council. In the circumstances, members are satisfied that the applicant is a fit and proper person and his licence will be granted

In the normal course of events the applicant would receive a suspension for breach of the condition on his driver licence. However, members take note of the fact that his licence has expired before the matter became before committee and he has not been able to drive as a private hire driver for a longer period than a suspension would normally have been applied. In the circumstances members do not consider it appropriate to suspend him further but the applicant should be aware of the condition of his licence and that he is obliged to notify the council of any fixed penalty notices, (even if accompanied by an offer to attend a speed awareness course) in writing within 7 days in the future.

LIC5

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCES – ITEMS 5 AND 6

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented the report with respect of Item 6 first. The applicant (applicant A) had applied for a licence on 12 May 2016. On the application form applicants were asked to disclose all offences, both spent and unspent. Applicant A answered this by disclosing a conviction for Common Assault in 2007 for which she received a 16 week suspended prison sentence.

The Council was required to obtain an enhanced DBS check as part of the application process. The revealed the offence disclosed by the applicant. In

addition to the suspended prison sentence, she had also received an unpaid work requirement of 100 hours and been ordered to pay costs of £307.

The Enforcement Officer said that although all of the applicant A's convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, she did not meet the Council's Licensing Standards which stated that 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 had interviewed applicant A on 12 May and asked her to explain the circumstances surrounding her conviction. She had been to Notting Hill Carnival with her father, brother and partner. She and her partner were ahead of the others and turned around to see her father and brother involved in an altercation. They ran back to try and stop the fight but became involved in the altercation.

The Enforcement Officer explained that applicant A had no convictions since 2008 and had worked for A & B Taxis for eight years to nine years. She was now thinking about starting a family and as a result was looking for a more flexible job.

The Enforcement Officer then presented the report for Item 5. The applicant (applicant B) had applied for a licence on 4 May 2016. On the application form applicants were asked to disclose all offences, both spent and unspent. Applicant B revealed two convictions; one for Battery and Racially Aggravated Criminal Damage in 2005, and one for Affray in 2008. He also revealed a TS10 motoring offence for which he received three penalty points.

The Council was required to carry out an enhanced DBS check for each applicant. This revealed the two convictions disclosed by applicant B. For the first offence he received a six month detention and training order for Battery and six month detention and training order for racially aggravated criminal damage. These ran concurrently. For the offence of Affray he received a 10month suspended prison sentence, along with an 18 month attendance centre requirement for anger management.

The Enforcement Officer said that although all of the applicant B's convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, he did not meet the Council's Licensing Standards which stated that 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 had interviewed applicant B on 4 May 2016 and asked him about the circumstances surrounding his conviction. Regarding the offence of Battery in 2004, he said that his brother and friends had got into an argument with the owner of a kebab shop. He could not prove that he was actually at work and was found guilty by association. The second offence took place when he was at Notting Hill Carnival. A fight broke out between his now father-in-law, brother-in-law and two other men. He and his partner had walked on ahead and

turned around to see them fighting. He went back to try and break up the fight but became involved as the brawl escalated. The applicant had been told that he should have called the Police and that his actions escalated the event. The applicant explained that at the time he believed he was doing the correct thing, but realised that he hadn't taken the correct course of action.

The Enforcement Officer said that applicant B had undergone anger management training twice a week for a year and had no convictions since 2008. After the incident he had become a trainee gas layer and was now a fully qualified gas layer. He worked on behalf of the Southern Gas network, had got married in 2015 and has had a mortgage for four years. He was taking further courses to gain further qualifications to invest in his family's future.

The Chairman invited the applicants to speak. Applicant A said that when they broke up the fight they both believed they had done the right thing, but now realised that they had not taken the correct course of action and would have acted differently in hindsight. The Police had arrested everyone involved in the brawl and at the time of the offences judges were handing out harsher punishments for violence at Notting Hill Carnival.

Applicant B explained the circumstances surrounding his conviction in 2005. At the time he had been working as an apprentice and had been working longer hours than he legally was supposed to and as a consequence could not prove that he was not present at the kebab shop.

In response to questions by Councillor Chambers, applicant B said that the owners of the kebab shop had felt the attacks were racially motivated. At the time of the first offence his home life had been troubled and he had used anger as a coping mechanism.

Applicant A then spoke in response to a question by the Enforcement Officer. She said that they had both been represented by different solicitors but had both been advised to plead guilty, which they did.

The Assistant Chief Executive – Legal said that for a racially aggravated offence, the Police would have to be satisfied the offence was racially aggravated. It was not for the victim to decide. Only the offence for criminal damage was considered racially aggravated. Had that been the only offence applicant B's licence would have been granted under delegated powers.

The Committee could not go behind the facts of the conviction. The Rehabilitation of Offenders Act had been amended in 2014 and offences were now deemed to be spent earlier than before. Under the old version of the Act, applicant A's conviction would be deemed spent, but applicant B's conviction would not be spent until 2018.

The Assistant Chief Executive – Legal said that when deciding whether to make an exception to policy, the Committee had four factors to consider. These were;

1. the nature of the offence
2. the severity of the offence

3. the length or severity of the sentence
4. the passage of time since conviction

The Enforcement Officer, applicant A and applicant B left the room at 2.55pm so the Committee could consider its decision. They returned at 3.10pm.

DECISION

Applicants A and B have applied to the council for the grant of joint private hire/hackney carriage drivers' licences. On his application form, applicant B disclosed two convictions. The first was for battery and racially aggravated criminal damage in 2005. The second was for an affray in 2008. A DBS check obtained in respect of applicant B confirmed these convictions. It showed that he appeared before the Mid-South Essex Juvenile Court in August 2005 and received a six month detention and training order for battery and a six month detention and training order to run concurrently for racially aggravated criminal damage. In December 2008 he appeared before the City of London Magistrates Court and was given a 10 month suspended prison sentence for affray under the Public Order Act 1986. He was also issued with an 18 month attendance centre requirement for anger management.

On her application applicant A disclosed a conviction for common assault for an offence committed in August 2007 for which she received a 16 week suspended prison sentence. The DBS check confirmed this conviction and showed that she was also ordered to undertake unpaid work for 100 hours and pay costs of £307.

Although these convictions are deemed spent under the Rehabilitation of Offenders Act 1974 as amended, paragraph 5 of the Licensing Standards require that applicants must have no criminal convictions for offences of violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed. Neither applicant A or B therefore meets the council's licensing standards.

Applicant B was interviewed by the Licensing Officer on 4 May 2016. With regard to the offence of battery, applicant B said this was committed when he was 15 years old. Applicant B said that his brother and some of his friends became involved in an argument with the owner of a kebab shop. Applicant B denies being present when the offence occurred. However, he was convicted and sentenced. With regard to applicant B's second offence, applicant A's conviction occurred as a result of the same incident. Applicant B explained that he was 19 at the time this offence occurred. He and his family were at Notting Hill carnival and a fight broke out between his now father-in-law and brother-in-law and two other men. Applicant B says that he and applicant A turned back and tried to break the fight up but got caught up in the brawl which then escalated. The police arrested everyone who was involved in the fight. Applicant B said that at the time he thought he was doing the right thing in trying to stop the fight but now understands it was not the right course of action. Applicant A gives a similar account of the offence.

Applicant B said that he underwent anger management training twice a week for a year.

When an applicant does not meet the council's licensing standards it is for him or her to show that there are good reasons why the council should depart from its policy. In essence the applicant must demonstrate why he or she may be considered to be a fit and proper person notwithstanding the fact that they do not meet licensing standards.

In considering such applications the council's licensing 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. With regard to the nature of the offence the offences for which applicants A and B have been convicted are crimes of violence. The Local Government (Miscellaneous Provisions) Act 1976 gives council's power to suspend, revoke or not renew a licence on the grounds that since the grant of the licence a driver has been convicted of an offence of dishonesty or an offence of a sexual or violent nature. It follows that Parliament placed great emphasis on offences of violence for drivers.

With regard to the seriousness of the offence battery, affray and assault are serious crimes carrying potentially lengthy sentences of imprisonment. Turning to the severity of the sentences in these cases, applicant A was sentenced to 16 weeks which was suspended. This is a relatively severe sentence for a first offence. Applicant B was sentenced to 10 months imprisonment suspended. This is a severe sentence probably inflated by virtue of the fact that he had served 6 months detention for a similar offence in 2005 but that would not explain all of the inconsistency between his sentence and that of his wife. Lastly with regard to the passage of time neither applicant A nor B have offended since 2008, a period of 8 years.

In applicant A's case she has only one conviction for which she received a reasonably short custodial sentence and has not offended since. On the balance of probabilities the committee is satisfied that she is a fit and proper person and her licence will be granted.

Applicant B has 2 convictions for offences of violence for which he received significant custodial sentences although the most recent sentence was suspended. He has also acknowledged that he has had anger management issues. Before the 2014 amendments to the Rehabilitation of Offenders Act the council's licensing standards were based on that Act. Under the pre 2014 law applicant B's conviction would have been spent after 10 years, that is to say in 2018. However the committee is satisfied that applicant B has turned his life around and do not consider that he poses a risk to passengers or the wider public. On the balance of probabilities the committee are satisfied that applicant B is also a fit and proper person and he too will be issued with a licence.

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

DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE AND FIVE HACKNEY CARRIAGE VEHICLE LICENCES

The Chairman read out the procedures for determining private hire operator's licences.

The Enforcement Officer presented his report. West End Cars currently held a private hire operator's licence due to expire on 30 September 2020 and was run by Mr Emin, who lived in Chelmsford. Their operating address was given as being in Great Dunmow. The company had six licensed drivers and five licensed vehicles. Three of the vehicles had been licensed as private hire vehicles. These licences had been surrendered so that the vehicles could be registered as hackney carriage vehicles.

The Enforcement Officer said that he visited the operating address on 24 March 2016, which did not have a sign in the window for West End Cars. Instead there was a sign for a company called Ballyclare Limited. He spoke to a lady in the adjacent unit who said that her boss rented out the given operating address and had done so for about two years. She had no knowledge of a taxi business operating from that address. Business rates records show that Ballyclare Limited is the company liable for the operating address.

On 14 April 2016, the Enforcement Officer, along with the Licensing Officer, visited the operating address. Again there was no evidence that West End Cars operated from the address. When they spoke to manager of Ballyclare Limited he confirmed they operated from the address and that he had never heard of West End Cars.

The Enforcement Officer said that at the time the Company still operated private hire vehicles so the record of bookings should have been available for inspection. Failure to provide records of bookings was an offence under the Local Government (Miscellaneous Provisions) Act 1976 and also breached condition 3 of the Council's licensing conditions for operators.

The Council had received complaints that West End Cars were driving around Chelmsford with a Chelmsford telephone number on the side of the vehicle and were not operating from within Uttlesford. As a result he had requested that all five vehicles were brought to the Council Offices for inspection. Three were brought in on 25 April. All three were liveried with "West End City Cars 01245 250250 www.01245250250.com". Mr Emin also showed the Enforcement Officer business cards which had a Chelmsford number and when the other two vehicles were brought in for inspection they also had the Chelmsford number on.

The Enforcement Officer informed Members that Chelmsford City Council's licence fees were significantly higher than those of Uttlesford. There was a financial incentive for persons from out of the area to be licensed with Uttlesford and the Licensing Department were experiencing this trend.

When hackney carriage licences were granted, the proprietor signed a form stating that the vehicle would primarily be used in Uttlesford. This was due to Newcastle City Council v Berwick-Upon-Tweed.

Mr Emin's operator's licence was now before the Committee to consider whether he remained a fit and proper person to hold a licence as he was seemingly not operating from the Uttlesford address supplied. If the application had been within the last six months the Assistant Chief executive – Legal would have seriously considered a prosecution for making a false statement to obtain a licence. However, the Council was now statute barred from doing this. Members should also consider the vehicle licences as the vehicles appeared to be operating primarily from outside the district.

The Chairman invited Mr Emin and Mr Bridge to speak.

In response to questions by Mr Bridge, the Enforcement Officer said that he had only made enquiries at Unit 8, Ongar Road. He had not been able to gain access to units 8a, b or c. His first contact with Mr Emin was at the vehicle inspection. He could not recall whether Mr Emin had explained that one of the no-smoking stickers had come off whilst the car was being cleaned.

Mr Bridge then asked Mr Emin a number of questions. In reply to these questions, Mr Emin explained that Chelmsford City Council had a difficult knowledge test which drivers were required to pass in order to obtain a licence. Uttlesford did not have such a test. This was when he first enquired about renting a small office on Ongar Road. This office contained a laptop which helped to facilitate the company's online booking system. Normally he would visit the office one or two times a week. He hadn't considered it necessary to have a sign at the office which indicated West End Cars operated from Ongar Road.

Mr Emin said that West End Cars operated primarily in the south of the district and serviced villages which were close to Chelmsford. All of his vehicles offered disabled access, which many other private hire/hackney carriage vehicles did not in the south of the district. After the vehicle inspections had taken place he had been asked for a copy of his rental agreement for Unit 8, Ongar Road. This was circulated at the meeting.

Mr Bridge asked Mr Emin about his understanding about the change in licensing laws on October 2015. In response to the question, Mr Emin said he understood the change in the law to allow sub-contracting of bookings.

Mr Emin spoke about the complaints received by the Licensing Officer about hackney carriage 48. He explained that the light on top of the vehicle was disconnected whilst the vehicle was within Chelmsford. Once he was contacted by the Enforcement Officer, he arranged a vehicle inspection as soon as possible. Mr Emin said that he had been told one of the issues with the vehicles was the Chelmsford telephone numbers liveried on them. The telephone numbers had been liveried on the vehicles a couple of days before the inspection.

In response to questions by Members, Mr Emin said that he had not arranged to have a sign with the company's name at the operating address. The office only contained a desk and the internet which allowed the fares to be recorded at the operating address. He did not have a Dunmow telephone so he could not put one on his vehicles. Vehicles could be booked through the Chelmsford telephone number. The booking was then sub-contracted to the Uttlesford office.

The Enforcement Officer drew attention to a photograph of one of the operator's vehicles taken in March 2016. He said that the vehicle clearly had the Chelmsford telephone number liveried on it. He then asked Mr Emin whether one of the reasons he had licenced the vehicles in Uttlesford was to avoid his drivers having to take Chelmsford City Council's knowledge test. In response, Mr Emin said that he had been concerned that his drivers would fail the knowledge test. He had not considered it a problem to display the Chelmsford number on his vehicles.

The Assistant Chief Executive – Legal advised the Committee that an operator's licence was not required for hackney carriage vehicles. The Committee had to consider whether the hackney carriage vehicles were predominantly used within Uttlesford. He highlighted the case of Newcastle City Council -v- Berwick-Upon-Tweed and outlined the key parts of the decision notice which were as follows:

“One of the reasons why Berwick have received numerous applications for licences from outside their area is undoubtedly the fact that the cost of the licence in Berwick- upon-Tweed is less than in many other areas including Newcastle upon Tyne. There may be other reasons as well relating to the conditions and bye laws imposed relating to the vehicles themselves. There is a danger, as was mooted in front of me, of Berwick becoming a national issuer of hackney carriage licences. Newcastle sought a declaration that it was unlawful for Berwick to grant a hackney carriage licence to a proprietor where it was not satisfied that the vehicle would ply for hire in the area of Berwick.

In my judgment the major purpose behind the 1847 Act, and indeed the 1976 Act, is the safety of the public by which I include both the travelling public as passengers and other road users. Thus the scheme of the legislation is directed towards having safe vehicles, fit and proper drivers and appropriate conditions of hire.

If hackney carriages are working remote from their licensing authority a number of, at the least potentially, undesirable consequences follow. The licensing authority will not easily keep their licensed fleet under observation. It will be carrying out its enforcement powers from a distance. The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in its area. Further, unlike its own licensed vehicles, the hackney carriage from remote areas will not be subject to the same conditions and byelaws as the local vehicles. It is no surprise that the legislation provides for testing and testing centres to be within the licensing authority's area.

It seems to me that it must be desirable for an authority issuing licences to hackney carriage to be able to restrict the issuing of those licences to proprietors and drivers which are intending to ply for hire in that authority's area. Similarly it must be desirable to be able to refuse to issue licences to proprietors and drivers who do not intend to ply for hire, to a material extent, in the area of the licence grantor.

Section 37 of the 1847 Act gives the authority concerned a discretion as to whether to grant a licence or not. Hence the use of the word "may". The exercise of that discretion falls to be considered against the background of the legislation and in my judgment should be used "to promote the policy and objects of the Act". The licence permits the vehicle to ply for hire in the prescribed area. The authority, if it wishes, can restrict the number of licences it issues based on demand within the area. The local authority can issue it its own conditions and make its own byelaws. It can make provision for its own inspections of the hackney carriages. Thus the licensing regime is local in character. In addition it can be seen that most of the provisions have public safety much in mind. The local imposition of conditions and byelaws, local testing and enforcement, together with the other statutory provisions I have referred to all seem to me to point clearly to the conclusion that it was the intention behind the licensing system that it should operate in such a way that the authority licensing hackney carriages is the authority for the area in which those vehicles are generally used. Further the 1847 Act provides for licences to be granted for hackney carriages to ply for hire within the prescribed distance (i.e. within the area of the licensing authority).

Having regard to the policy and objects of the Act in my judgment Berwick in exercising its discretion under section 37 of the 1847 Act should take into account where the hackney carriage will be used. The byelaws and conditions which apply to Berwick's licensed hackney carriages are largely there to promote safety and to ensure that the vehicles are easily identifiable. They are made and imposed to protect the public and in particular the public in the Berwick-upon-Tweed area. If the hackney carriages are used in areas remote from Berwick-upon-Tweed enforcement will be very difficult and impracticable. On one view what happens to hackney carriages owned, kept and used outside the Borough are really not Berwick's concern but the concern of the area where they are operating.

It seems to me that the question to be asked is not whether a hackney carriage proprietor once a licence is granted would be acting lawfully but rather whether in exercising their discretion a licensing authority can use its discretion to ensure that it maintains control over those vehicles it has licensed. In my judgment a local authority, properly directing itself, is entitled, and indeed obliged, to have regard to whether the applicant intends to use the licence to operate a hackney carriage in that authority's area and also to have regard to whether in fact the applicant intends to use that hackney carriage predominantly, or entirely, remotely from the authority's area. This should result in each local authority licensing those hackney carriages that will be operating in their own area and should reduce the number of hackney carriages which operate remotely from the area where they are licensed.

Approaching the matter in that way there is in fact no need to have regard to the private hire regime in the exercise of the discretion. But in my judgment the two regimes relating to hackney carriages and private hire vehicles are to be considered as closely related and complementary and it would not be unlawful to have regard to both regimes when issuing licences in either one. The fact that hackney carriages are expressly excluded from the private hire scheme does not seem to me to alter the position.

I am anxious not to direct how Berwick, or any other local authority, should exercise their discretion which must be a matter for their own judgment taking into account the need to have available safe and suitable hackney carriages and having proper regard to the safety of the public. However it would seem to me to be difficult for any local authority to justify exercising their discretion by granting a hackney carriage licence to an applicant when the authority knows that the applicant has no intention of using that licence to ply for hire in its area. This is particularly so when the local authority also knows that the intention is to use the hackney carriage in an area remote from that authority's area. I say that because it seems to me it is very difficult to exercise proper control over hackney carriages which are never, or rarely, used in the prescribed area. It is also undesirable for authorities to be faced with a proliferation of hackney carriages licensed outside the area in which they are being used and therefore not subject to the same conditions and byelaws as apply to those vehicles licensed in the area.

It must be a matter for Berwick to exercise its own discretion in this matter taking into account the terms of this judgment. While I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from Berwick-on-Tweed I am not prepared to say that it is bound to be unlawful. I certainly do not think it is essential that Berwick use section 57 of the 1976 Act. It is quite apparent that Mr. Wilson and his staff have, as one would expect, a fairly good idea of what is going on in their area and it may be they will not need to use that power. For example if Berwick were to make it known they were no longer going to issue hackney carriage licences to those intending to operate in some other district it may well be that the number of applications will reduce dramatically with little need for any action. That may be wishful thinking but as I have said that is a matter for Berwick and its officers.”

The Assistant Chief Executive – Legal then read the declaration which was as follows:

“(i) In the proper exercise of its statutory discretion under section 37 of the Town Police Clauses Act 1847 a licensing authority is obliged to have regard (a) to whether the applicant intends that the hackney carriage if licensed will be used to ply for hire within the area of that authority, and (b) whether the applicant intends that the hackney carriage will be used (either entirely or predominantly) for private hire remotely from the area of that authority.

(ii) A licensing authority may in the proper exercise of its discretion under the said section 37 refuse to grant a licence in respect of a hackney carriage that is not intended to be used to ply for hire within its area and/or is intended to be

used (either entirely or predominantly) for private hire remotely from the area of that authority.

(iii) In determining whether to grant a licence under the said section 37 a licensing authority may require an applicant to submit information pursuant to section 57 Local Government (Miscellaneous Provisions) Act 1976 in order to ascertain the intended usage of the vehicle.”

Mr Bridge said the Committee were considering two issues. The first of these was the operator’s licence. He said that Mr Emin had kept up to date with his dispatch system and therefore the Ongar Road office did not require constant monitoring. Mr Emin had admitted making an error regarding the telephone numbers and would look to rectify this in the future. He had demonstrated that West End Cars would look to increase the proportion of its work carried out in Uttlesford, demonstrated a need for operators in the south of the district and that the operator already received a substantial number of bookings within the district.

The second issue was regarding the vehicle licences. The inspection had revealed no serious concerns with any of the vehicles. The concern was whether the vehicles were operating primarily within Uttlesford, or within Chelmsford. Mr Emin had said he would remove the Chelmsford numbers from his vehicles and therefore further action was not needed.

The Assistant Chief Executive – Legal, the Democratic and Electoral Services Officer, Councillors Chambers, Davey and Parry all left the room at 4.30pm so the Committee could consider its decision. They returned at 4.35pm so the Committee could ask further questions.

Councillor Parry asked Mr Emin what his relationship with Chelmsford City Taxis was. He explained that it was his business. In follow up, Councillor Parry said that when the telephone number on the vehicles was put into an internet search, it came up with the website for Chelmsford City Taxis. The website itself did not mention Uttlesford. In reply, Mr Emin said there was currently no website presence for the Uttlesford part of the operation.

The Assistant Chief Executive – Legal, the Democratic and Electoral Services Officer, Councillors Chambers, Davey and Parry all left the room again at 4.40pm so the Committee could consider its decision. They returned at 5.10pm.

DECISION

On 27 October 2015 Mr Ismail Emin was granted an operator’s licence trading as West End Cars. The operating address stated in the application was Unit 8, Ongar Road Trading Estate, Ongar Road, Great Dunmow. When making his application for an operator’s licence Mr Emin lodged a letter from Mr Peter Greathead stating that he had been a tenant at the property since 1 October 2015.

Initially, Mr Emin had a number of private hire vehicles licensed by this council but these were surrendered and hackney carriage licences obtained instead.

Mr Emin now has a fleet of 5 vehicles all licensed by this council as hackney carriages namely a black Volkswagen Passat registration BN59 SCV plate number 30, a black Chrysler Grand Voyager registration YY57 OFV plate number 111, a black Renault Megane registration DL11 TKA plate number 115, a black Peugeot Xpert registration SA08 WCD plate number 106 and a black London style taxi INT TX4 registration SN56 HTX plate number 48. Mr Emin does not currently have any private hire vehicles licensed by this council and does therefore not need an operator's licence.

On 24 March 2016 an enforcement officer called at the Great Dunmow office with a view to inspecting the record of private hire bookings for West End Cars. Unit 8 was sign written for a company called Ballyclare Limited. The officer spoke to a lady at no.7 who said that Ballyclare Limited had been in possession of Unit 8 for about 2 years. She had no knowledge of any taxi business running from that address and had never seen anyone there connected with such a business. There was no mention in the vicinity of West End Cars. Ballyclare Limited is the company registered as being liable for business rates on Unit 8. A further visit was carried out on the 14 April. Again there was no evidence of West End Cars trading from that unit. The branch manager of Ballyclare Limited was present. He stated that he had never heard of West End Cars and that his own business was run from the address.

At the time of these visits West End Cars was still operating private hire vehicles and the records of bookings should therefore have been available for inspection at the offices. Failure to provide records of private hire bookings is an offence under the Local Government (Miscellaneous Provisions) Act 1976 and a breach of condition 3 of the private hire operator's conditions of licence.

Subsequently the council received complaints that West End Cars vehicles were seen in the Chelmsford area displaying a Chelmsford telephone number on the sides of the vehicles. Mr Emin was asked to produce the vehicles for inspection and did so on the 25 and 27 April. All the vehicles were liveried on the side and rear with "West End City Cars 01245 250250
www.01245250250.com"

It is quite apparent that Mr Emin's hackney carriages which are licensed by this council are not being used in the district of Uttlesford but are being used as private hire vehicles in the district of Chelmsford and are blatantly advertising that fact. Mr Emin says that he is carrying on business in Uttlesford but there is no website for West End City Cars. A search of the internet against the telephone number 01245 250250 goes straight to Chelmsford City Cars which, according to the website is firmly based in Chelmsford. So far as Uttlesford is concerned Mr Emin has produced no advertisements or promotional material. His business card is for the Chelmsford operation. There is no signage at the alleged office in Dunmow indicating the firm's presence. There is not even an Uttlesford telephone number. Although there is no legal requirement to keep records of private bookings for hackney carriages Mr Emin describes his operation as being web based and he could if he had wished produced evidence to show what activity, if any, he is engaged in in Uttlesford. Equally he has failed to provide any evidence of bookings he took within Uttlesford for his private hire vehicles when they were licensed as such. The inference the

committee draw is that there were none. Mr Emin must have known that the issue of where the vehicles were being predominantly used was a crucial issue today but he chose to produce no supporting evidence at all. The reason why a Chelmsford operator would seek to license in Uttlesford is quite clear. A private hire operator with 4 vehicles or more would pay £2,599 for an operator's licence in Chelmsford compared to £350 in Uttlesford. The cost of a hackney carriage licence in Chelmsford is £527 compared to £50 in Uttlesford.

The Assistant Chief Executive – Legal has drawn the committee's attention to the case of R (on the application of Newcastle City Council) v Berwick upon Tweed Borough Council 2008. The facts in that case were that Newcastle limited the number of hackney carriage licences which it issued as it was entitled to do as it was satisfied that there was no significant unmet demand for the services of hackney carriages within the city. Proprietors of vehicles who wished to carry on business in Newcastle were therefore licensing their vehicles with Berwick Council as hackney carriages and using them as private hire vehicles in the City of Newcastle. Whilst it would have been open to those individuals to seek private hire operators, drivers and vehicle licences within Newcastle, the cost of licences in Berwick upon Tweed was less than Newcastle and there were further attractions relating to the conditions and bylaws relating to the vehicles themselves. Mr Christopher Symons QC sitting as a Deputy Judge in the High Court said that there was a danger of Berwick becoming the national issuer of hackney carriage licences. Newcastle challenged the decision of Berwick seeking a declaration that it was unlawful for Berwick to grant a hackney carriage licence to a proprietor where it is not satisfied the vehicle if licensed would ply for hire in the area of Berwick. Mr Symons QC held that the main purpose behind the 1847 and the 1976 Acts is the safety of the public, both passengers and other road users. The scheme of legislation is directed towards having safe vehicles, fit and proper drivers and appropriate conditions of hire. He held that if hackney carriages are working remote from their licensing authority a number of undesirable consequences may follow. The licensing authority will not easily keep the licensed fleet under observation. It will be carrying out its enforcement powers from a distance. The licensing authority where the hackney carriage has chosen to operate will have no enforcement powers over the vehicle although it is being used in its area. Further the hackney carriages from remote areas will not be subject to the same conditions and bylaws as local vehicles. The judge stated that it was no surprise that the legislation provided for testing and testing centres to be within the licensing authority's area. He went on to say that "it seems to me that it must be desirable for an authority issuing licences to hackney carriages to be able to restrict the issuing of those licences to proprietors and drivers which are intending to apply for hire in that authority's area. Similarly it must be desirable to be able to refuse to issue licences to proprietors and drivers who do not intend to ply for hire, to a material extent, in the area of the licence grantor." He said "I cannot at the moment conceive of it being rational to grant a licence to those who intend to operate their hackney carriages remotely from Berwick upon Tweed". He concluded that Berwick had a discretion to refuse to issue licences to those who had no intention of exercising their right to ply for hire in Berwick and/or to those who intend to use the vehicle predominantly in an area remote from Berwick.

Anecdotally, Uttlesford has one of the lowest fee structures in the country and almost certainly in the county of Essex. There is a danger of Uttlesford becoming a national issuer of hackney carriage licences. Paragraph 4.3 of the council's licensing policy provides that "in addition to the licensing standards for hackney carriage and private hire vehicles, following the decision in R. (on the application of Newcastle City Council) v Berwick upon Tweed BC it is the policy of the council not to licence any hackney carriage which will not be used predominantly in the district of Uttlesford". To reinforce this it is the practice of the council to seek a declaration from applicants for hackney carriage licences that the vehicle will be predominantly used within the district. Mr Emin completed such a declaration in respect of each of his hackney carriage vehicles. That declaration was clearly false. There is no evidence to show that at any time since he was licensed as an operator he has operated any private hire vehicles within the district of Uttlesford. There is also no evidence to show that any of the licensed hackney carriages have at any time been used as such within the district.

Had the council been aware that Mr Emin had no intention of carrying on business as a private hire vehicle operator when he applied for his operator's licence, the licence would not have been granted. He does not operate and never has operated as a private hire operator in the district and has no need for any such licence. The committee further take a view that Mr Emin has been dishonest with the council in purporting to be carrying on business from premises where he has no business interests. He clearly informed the council that his business address within the district was Unit 8 Ongar Road Trading Estate, not Unit 8 b as he said today. The documents produced from his alleged landlord being a letter and a tenancy agreement also refer to Unit 8. Mr Emin was further dishonest in his declarations that his hackney carriages would be predominantly used within the district of Uttlesford when he applied for those licences. In the circumstances the committee are satisfied that Mr Emin is not a fit and proper person and his operator's licence will be revoked under section 62(1)(b) and (d) Local Government (Miscellaneous Provisions) Act 1976 namely that there has been conduct on his part which appears to the council to render him unfit to hold an operator's licence and for any other reasonable cause.

With regards to the vehicle licences these vehicles are clearly sign written for Chelmsford and that is where they carry on their trade. There is no evidence to suggest they are currently or ever have been used in Uttlesford or that there is any intention that they should be. In the circumstances, all of the five vehicle licences will be revoked under s.60(1)(c) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause based upon the decision in the Newcastle and Berwick case.

The Assistant Chief Executive – Legal informed Mr Emin of his right to appeal the decision within 21 days of having received a notice of the decision.

The meeting ended at 5.30pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 6 JUNE 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey, R Gleeson and T Goddard

Officers in attendance: M Perry (Assistant Chief Executive – Legal), A Rees
(Democratic and Electoral Services Officer) and A Turner
(Licensing Team Leader)

Also Present: Councillor J Freeman, Mr K Patel, Mr M Patel, Mr R Jordan (the
applicant's consultant), Councillor D Morgan (Thaxted Parish Council), Mr I
Barnard and Mrs J Francis.

LIC7 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

LIC8 **APPLICATION FOR A NEW PREMISES LICENCE – THAXTED POST
OFFICE, 8-10 TOWN STREET, THAXTED, CM6 2LA**

The Chairman read out the procedures for determining premises licence
applications.

The Licensing Team Leader presented her report. The licensable activities
being sought by Thaxted Post Office were as follows:

Supply of Alcohol (off premises)	Monday – Sunday 8am-9pm
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Opening Hours	Monday – Sunday 5am-9pm
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The operating schedule also indicated the measures which would be adopted to
meet the four licensing objectives. Copies of the application were served on the
statutory bodies. They had made no representations.

Eight representations had been received from interested parties including the
Parish Council which had raised concerns based on the prevention of public
nuisance and the protection of children from harm. A petition had also been
logged by one of the interested parties although this did not form a
representation in its own right. The concerns raised were as follows:

(a) The village already has two food shops and 4 pubs selling
alcohol responsibly and no further outlets are required

(b) The position of the Post Office has a wide pavement outside with bench ideal for immediate consumption of alcohol and people to congregate.

(c) Premises regularly visited by school children as also sells toys and sweets.

(d) Post Office is very close to bus stop where children gather and alight from school bus. Sale of alcohol here therefore puts children at risk.

The Licensing Team Leader said the licensing authority had to promote the four licensing objectives as defined in the Licensing Act 2003. These were; the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm.

The Committee could consider whether to grant the application as applied for, modify the application by inserting conditions, reject the whole or part of the application. When determining the application due regard should be given to the Council's Licensing Policy, as well as the Secretary of States' Guidance.

The Licensing Team Leader said that if the Committee decided to impose conditions, they had to be appropriate and proportional to promote the licensing objectives. Additionally they could not duplicate existing legislation.

The Chairman invited Councillor Morgan to speak. He said that the whole of the Parish Council was opposed to the application as it did not meet three of the licensing objectives; the prevention of crime, the prevention of public nuisance and the protection of children from harm.

The Store was located next to a bus stop which was by children going to and from school. It was also on a wide pavement so people tended to congregate outside, including school children who would go to the Store after school had finished. The Parish Council hoped that the application would be outright rejected and added that there were a number of premises nearby which sold alcohol so there were was no need for a licence to be granted.

Councillor Morgan then said that the Council's Licensing Policy was proactive and that public nuisance was to be prevented before it occurred. Public nuisance was defined in its widest possible term. The Secretary of State's Guidance also stated that public nuisance should not be narrowly defined.

The Chairman read out the representation made by Councillor Foley during the consultation for the application, which was appended as Appendix B5 to the report.

The Chairman invited Mr Jordan to speak on behalf of the applicants. He began by outlining the training which would be undertaken by staff, which included age verification, the consequences of selling alcohol to underage persons, selling alcohol outside of the licensable hours, selling to those who were purchasing as

a proxy for someone underage and selling to those who were already intoxicated. A Challenge 25 scheme would be in operation.

There were no grounds to depart from the Council's Licensing Policy as no exceptional reasons had been advanced. No representations had been made any of the statutory bodies and there had been no history of disturbances at the store.

Mr Jordan said that there was a NISA supermarket nearby which also sold alcohol and was also near a bus stop. This store had experienced no problems. Toys were currently sold at the Waylett Store, but this was not grounds to depart from policy. All toys would be displayed separately from any alcohol on sale. The petition could not be taken into account as it had not been included in the background papers.

In response to questions by Councillor Goddard, firstly the Licensing Team Leader said that no representations had been made by any of the statutory authorities. Secondly Councillor Morgan said that there had been some instances of underage drinking outside of the places in Thaxted which currently served alcohol. Finally, Mr Jordan said that 8am had been sought for the licensable hour as it was close to the stores opening hours. It was not expected that much alcohol would be sold in the morning.

In response to further questions by Members, Mr M Patel explained that staff would be trained not to sell alcohol until the licensable hours and a strict ID scheme would be in place. Before the licensable hours, alcohol would be hidden from sight by roller blinds.

The Assistant Chief Executive – Legal explained that prior to 2005, applicants did need to demonstrate a need for the licensable activities. However, following the implantation of the Licensing Act 2003, this was no longer a consideration for the Committee. It was common for shops to have the same opening and licensable hours, although this was not the case for the Store. Selling alcohol before the licensable hours was a criminal offence. If prosecuted, the Store could also lose its premises licence.

He then said that once a member of the public left the premises they were no longer the responsibility of the licence holder. There had been a number of drink zones throughout the district. These had now lapsed but if an issue did arise then they could be re-implemented if necessary. Any conditions related to the protection of children from harm were more likely to be added if the licence was reviewed.

Lastly, the Assistant Chief Executive – Legal drew the Committee's attention to the case of R. (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates' Court 2008, which he said meant that an evidence based approach needed to be taken to decision making.

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.

Councillors Chambers, Davey, Goddard and Gleeson, the Democratic and Electoral Services Officer and the Assistant Chief Executive – Legal left the room at 10.30am so the Committee could consider its decision. They returned at 10.50am.

DECISION

Waylett of Thaxted Limited has applied for a premises licence in respect of Thaxted Post Office in Town Street, Thaxted. The premises are described as being a Post Office and convenience store. The application is for the sale of alcohol for consumption off the premises only. The proposed hours that the licence will be in effect are from 8am to 9pm, 7 days a week. The premises are actually open for longer than the licence is sought for namely from 5am until 9pm every day.

In the operating schedule the applicant offers up the following conditions:

1. CCTV shall be installed with a 21 day recording facility.
2. Staff training shall be recorded and shall cover the requirements for ID as part of age verification.
3. The licence holder shall ensure that a refusals register is kept on the premises and that it is available for inspection upon the request of an authorised officer.
4. The register shall record any refused sale of alcohol. It shall be inspected on a regular basis (at least weekly) by the designated premises supervisor who will sign to confirm that he or she has checked the register.
5. The refusal register shall be retained for at least 12 months and available during that time for inspection by an authorised officer.
6. A Challenge 25 Policy will be applied on the premises at all times. Signage of the Challenge 25 Policy shall be promptly displayed on the premises.
7. Acceptable identification to verify age shall be a passport, photo driving licence or PASS accredited identity card.
8. Signage shall be displayed in a prominent position on the premises requesting customers to leave quietly.
9. Signage shall be prominently displayed warning customers of the legal penalties for purchasing alcohol for any person under the age of 18.

The application has proved controversial within Thaxted and has attracted a number of objections. These are based upon concerns that a licence at the premises could adversely impact upon the licensing objectives of the prevention of public nuisance and/or the protection of children from harm. It is pointed out that there is a school pick-up and drop-off near the premises. There is a wide pavement outside the premises with a bench which is ideal for the immediate consumption of alcohol. It is said that school children regularly visit the premises. Some objectors also considered that a licence may adversely impact

upon the objective of the prevention of crime and disorder but no explanation was given as to why this may be the case outside of the risk of alcohol being purchased for children under 18. One objector lodged a petition containing 500 signatures in opposition. A number of objectors also cited the fact that Thaxted appears to be well served by licensed premises and does not need another off-licence. The objectors include one of the local members and the parish council.

The committee immediately rejected the objections on the ground that there is no need for a licence. It is right to say that prior to the 2003 Licensing Act coming into effect; applicants for new licences did need to demonstrate need. If the Licensing Justice considered that an area was well served by licensed premises, then they ought to have refused applications for new licences. That situation does not prevail under the 2003 Act. Unless the council has a cumulative use policy, which this council does not, the number of licensed premises in an area is entirely irrelevant.

The licensing authority must exercise its powers so as to promote the four licensing objectives of prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Although the premises have not yet been licensed they have traded for a number of years. Objectors have said that children use the premises to buy sweets, drinks etc. There is no evidence to show that the premises have to date been the source of any crime or disorder or that customers from the premises have caused a public nuisance. The government's guidance states that the authority's determination should be evidence based. The committee's attention has also been drawn to the case of R. (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates' Court 2008. This concerned an appeal to Licensing Justices from a decision of a licensing committee. The judge in the High Court said "there can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgement, they must measure their own views against the evidence presented to them. In some cases the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the Police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance, particularly carefully if the responsible authorities raise no objections on these grounds". He went on to say "However in my view their approach to what was 'necessary' was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the guidance they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. The fact that the Police did not oppose the hours sought should have weighed very heavily with them whereas, in fact, they appear to have dismissed the Police view because it did not agree with their own".

In this case there have been no representations from the responsible authorities including the police and child protection unit. There is no evidence linking the premises with any crime or disorder. Whilst it may be the case that children frequent the premises the committee take notice of the fact that there are numerous convenience stores and similar shops which are frequented by

children which are licensed without difficulty. Any concerns which the committee may have had would be adequately dealt with by the conditions offered up by the applicant in the operating schedule to the application.

In the circumstances, the committee grant the licence in the terms of the application. If any evidence comes to light of adverse impact upon any of the licensing objectives, then anyone concerned may apply for a review of the licence.

The Assistant Chief Executive – Legal informed the interested parties of their right to appeal the decision.

The meeting ended at 11.05am.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 30 JUNE 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey, E Hicks 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).

Also Present: Mr Drinkwater, Mr Leech (SL Executive), Mr Foreman, the
applicants in relation to Items 4 and 5, the drivers in relation to
items 6 and 7, the operator in relation to items 6 and 7 and a
friend of the applicant in relation to Item 5.

LIC10 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence and declarations of interest.

**LIC11 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE AND FIVE
PRIVATE HIRE VEHICLE LICENCES**

The Chairman read out the procedures for determining private hire operator's
and private hire vehicle licences.

The Enforcement Officer presented his report. SL Executive was currently
licenced by the Council as a private hire operator, with its licence due to expire
today. The company had given their operating address as Suite 17, 3rd Floor,
Eneavour House, Coopers End Road, Stansted, Essex, CM24 1RS. A check of
Companies House showed the companies registered address as being within
the district of Maldon.

The Council's records showed that the company had six licensed drivers and
five private hire vehicles. The Operator was the proprietor of two, and Mr Leech
was the proprietor of three.

The Enforcement Officer said that on 1 June 2016, two enforcement officers
visited the operating address. They spoke to a lady at the reception desk who
said that the Operator had an office at the address which was not a virtual
office. The officers then met with Mr Leech at the operating address on 7 June.
Mr Leech explained that he was also licenced by Maldon District Council and
was trying to move his operation to Uttlesford, but this was a slow process. He
paid £5,000 for the offices in Stansted and was the only person with access to
them. He came to the address when he did transfers at Stansted Airport.

The office had two desks, two chairs, a telephone, a laptop, a printer and a set
of filing cabinets. Mr Leech said that most bookings came through via email, but
the ones which did come through by phone were diverted from the phone in

Stansted to his mobile. He then transferred the information to a spreadsheet. He showed the officers the spreadsheet which contained all the required information. When the officers left the address Mr Leech gave them his business card which had a Maldon telephone on and the Maldon operating address.

The Enforcement Officer said that the officers took an extract of private hire bookings from between 4 April 2016 and 31 May 2016. During this period there were 253 bookings of which 51 included journeys to or from Maldon and 44 were journeys to or from Uttlesford. All other journeys started and ended outside the District.

The Enforcement Officer informed Members that Maldon District Council's licence fees were significantly higher than those of Uttlesford. There was a financial incentive for persons from out of the area to be licensed with Uttlesford and the Licensing Department were experiencing this trend.

When hackney carriage licences were granted, the proprietor signed a form stating that the vehicle would primarily be used in Uttlesford. This was due to Newcastle City Council v Berwick-Upon-Tweed.

The website for SL Executive Limited showed that the company was based in Maldon and worked all over Essex. The head office was given as the Maldon operating address, but did state that they had a branch office at Stansted Airport. The main telephone number given was a Maldon telephone number.

The operator's licence therefore came before the Committee as the operator was seemingly not operating private hire vehicles predominantly within the Uttlesford. If members took action against the operator licence then they should also consider whether to take action against the private hire vehicles.

Mr Drinkwater noted that paragraph 7 of the report provided more details than the notebook which was appended. In response the Enforcement Officer said that he compared his notes with those of the other enforcement officer. In reply to a further question, the Chairman said that it was up to Members to determine how relevant any case law was when determining licences.

In response to questions by Members, the Assistant Chief Executive – Legal said the operating from Uttlesford was cheaper than in Maldon, even for 'one-man band' style operations.

Mr Drinkwater said it was important to consider the facts as they were. The operating address in Stansted was a physical office and was the registered address with Companies House. He explained that Mr Leech worked at the office when he was not driving for around 15/20 hours a week.

When enforcement officers visited the address his booking records had all the required information. The figures in paragraph 9 of the report demonstrated growth in Uttlesford, although it didn't matter where jobs either started or finished. The Berwick case was misleading as it was for hackney carriages rather than private hire vehicles.

Mr Drinkwater said that both the business card and website had now been changed to reflect that Stansted was the main operating base of the company. These changes were part of a planned growth within Uttlesford. Mr Leech had spent £10,110 transferring the business from Maldon and had been successful in attracting regular clients.

Mr Leech explained that he had been trading for 10 years and had started as a one man operation. He now wished to move into Uttlesford to expand his business and utilise Stansted Airport. Much of his advertising was based around ensuring that internet searches gave prominence to his company. The ratio of business in Uttlesford to Maldon was improving. He had reduced the number of drivers he had licenced with Maldon from five to two and also planned to let his operator's licence in Maldon lapse when it expired in 2020. He had incurred the cost of transferring his drivers licenced with Maldon to Uttlesford. He had now had five vehicles licenced with Uttlesford.

The Chairman said that it appeared strange that most of the information provided by Mr Drinkwater and Mr Leech at the meeting, such as the change in registered address at Companies House had not come to light until after the investigation had taken place. It may not have been necessary for the matter to be referred to the Committee if this information had been forthcoming previously.

In response to this, the Assistant Chief Executive – Legal said that even if the changes had been made before the investigation, he would have still brought the matter before the Committee for consideration. He then outlined the case law highlighted in the report. He said that the Berwick case was relevant. Berwick's licences were much cheaper and less restrictive than those of Newcastle's. The decision of the case stated that there were undesirable consequences if operators plied for trade outside of the authority which they were licenced by. The other two cases supported the Berwick case and were both in relation to private hire vehicles.

It was not an issue of whether the operator was acting lawfully, but whether a local authority used its discretion to ensure that an operator operated predominately within the area of the authority it was licenced by.

Mr Drinkwater summed up his case. He said that SL Executive had now been operating in Uttlesford for a year and the Council's Economic Strategy welcomed companies who wished to work in Uttlesford. Growing a business took time and the operator was demonstrating growth. Mr Leech did meet the Council's licensing standards and had been open and compliant in the Council's investigation. The proportionate decision was to renew the licence.

LIC12

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.

Councillors Chambers, Davey, Hicks and Parry, the Assistant Chief Executive – Legal and the Democratic and Electoral Services Officer left the room at 3.10pm so the Committee could consider its decision. They returned at 3.45pm.

DECISION

SL Executive Limited currently holds a private hire operator licence (PHO049) which is due to expire at midnight tonight. It has applied to the council to renew its licence and also the licences of Mr Leech as a driver. The application was referred to the committee as evidence suggested that the company's main centre of business was not within the District of Uttlesford but in Maldon. The committee heard this afternoon that the business commenced in Maldon 10 years ago and all appropriate licences were issued by Maldon District Council. However last year Mr Leech took the decision to transfer his business to Uttlesford. He has rented an office within the district and currently has 5 vehicles and six drivers licensed by the council. It was explained that the transfer of the business is a gradual matter and that Rome was not built in a day. However Mr Leech has not renewed his driver's licence with Maldon and now only has 2 vehicles licensed there.

On issues concerning renewals or revocation of licences the burden of proof is upon the council to establish that there are good grounds not to renew or to revoke. If SL Executive are trading elsewhere using Uttlesford licensed vehicles that would be a good reason to refuse the operator's licence and revoke the vehicle licences. However the committee are not currently satisfied on the balance of probabilities that this is the case. The licences will therefore be renewed.

However the committee do note with concern that currently less than 20% of the bookings taken appear to have any connection with Uttlesford. If that situation continues then based on the Berwick case it would not be reasonable for the council to continue to licence the vehicles. The committee therefore require enforcement officers to monitor the business to ensure that it does indeed grow as projected so that members can be satisfied that vehicles licensed by the council are predominantly used within the district.

LIC13

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

The Chairman read out the procedures for determining private hire/hackney carriage driver's licence.

The Licensing Officer presented her report. Mr Foreman had been licenced by the Council since 2004. On 19 September 2013 his licence was suspended for two days for failing to notify the Council of a fixed penalty notice within seven days within writing, although he did email the Licensing department. He received two further fixed penalty notices in 2014 which Mr Foreman informed

the Council of in writing. In all three instances his licence was endorsed with three penalty points.

On 10 November 2015, Mr Foreman emailed the Council about a notice he had received a notice of intended prosecution for an offence on 18 October 2015. He said that he intended to go to the Magistrates Court to dispute it. Mr Foreman then kept the Council informed of progress on the case. On 9 June 2016 he revealed that he had received three further points on his licence and a fine of £150. Although his licence had 12 points endorsed upon it, the court did not disqualify him from driving.

The Licensing Officer explained that Mr Foreman no longer met licensing standards as he had now accumulated 12 penalty points within a three year period. The Council's policy stated that "3. Where a driver has been disqualified from driving for any reason a licence will not normally be granted for 3 years after the disqualification has expired or 12 months after the date the driver's licence is re-issued whichever is the later. 4. For the purposes of paragraph 3 above where a driver has accumulated 12 or more points in a 3 year period but has not been disqualified at the discretion of the court he or she will be deemed to have been disqualified at the date of the hearing when the magistrates exercised their discretion not to disqualify and the deemed disqualification shall be taken as having expired on that date."

When a licence was endorsed with 12 penalty points within a three year period the Magistrates Court must impose a six month disqualification unless there are special circumstances such as exceptional hardship. Hardship was a factor for the Magistrates to consider, but, as demonstrated by Leeds City Council -v- Hussain, the licensing authority could not take personal circumstances into consideration.

Mr Foreman said that he had been grateful to have not received an immediate suspension and pointed out that three of the points were due to expire next month. Therefore in July he would meet the Council's standards. He also noted that none of the points were imposed whilst he was carrying out work as a private hire driver.

The Chairman invited Mr Drinkwater to speak on behalf of Mr Foreman. He began by stating that he had a number of character references. Mr Foreman had always worked for companies who worked from Stansted Airport and his managers had always been impressed by his conduct.

Mr Foreman said that he accepted the suspension that had been given to him when he had initially failed to notify the Council of a fixed penalty notice. He added that the Magistrates' had imposed the lowest possible penalty that they could impose. He had worked as a driver for 12 years and these were the only two blemishes on his record. When asked about the circumstances surrounding the penalty points he had received, Mr Foreman said that in one of the instances he had been driving at round 48mph in a 40mph zone when there had been thick fog. In another he had been driving at 71mph on a stretch of motorway with a variable speed limit. At the time he had been driving the speed limit was 60mph.

Mr Drinkwater added that in eight days' time Mr Foreman's licence would only be endorsed with nine points. A further three points would drop off in one year.

The Assistant Chief Executive – Legal said that the Council's licensing policy stated that drivers who had been disqualified from driving would not normally be able to re-apply for a licence for three years. The Policy also stated that any driver whose licence was endorsed with 12 points was treated as being disqualified. The driver did not meet standards so the burden of proof was on him to demonstrate why the Council should depart from its policy.

The Magistrates Court was instructed to take into account any hardship caused by its decision. The Committee could not take into account personal circumstances as demonstrated by Hussain -v- Leeds City Council. It was not relevant that three of Mr Foreman's penalty points would soon drop off from his licence as he was deemed to have been disqualified..

Mr Drinkwater questioned whether it was reasonable or proportionate to suspend or revoke the licence. Mr Foreman's fitness as a driver had not been called into question for the last 12 years. If the Committee were minded to suspend the licence they may wish to suspend Mr Foreman for eight days as this was when his licence would only be endorsed with nine penalty points.

In response to Mr Drinkwater, the Assistant Chief Executive – Legal said that where a driver had been sentenced by the Court, the Committee could not reasonably impose a suspension. The Committee could therefore only decide whether to revoke the licence or take no further action.

Councillors Chambers, Davey, Hicks and Parry, the Assistant Chief Executive – Legal and the Democratic and Electoral Services Officer left the room at 4.15pm so the Committee could consider its decision. They returned at 4.55pm.

DECISION

Mr Foreman has been licensed by this council as a private hire driver since April 2004. For all that time he has worked for the private hire operator who holds the airport franchise. In July 2013 Mr Foreman received a fixed penalty notice for excess speed. In March 2014 and November 2014 he received 2 further fixed penalty notices for excess speed bringing the total of points on his licence to 9. On 18 October 2015 Mr Foreman was detected exceeding the speed limit again. He notified the licensing department of his pending prosecution and said that he was going to defend the summons. On 9 June 2016 Mr Foreman advised the licensing department that he had attended court and had been fined £150 and his licence endorsed with 3 points. However although the number of points on his licence gave rise to a mandatory disqualification the magistrates exercised their discretion not to disqualify, presumably on the basis of exceptional hardship.

The council's licensing policy states that where a driver has accumulated 12 points on his licence but has not been disqualified at the discretion of the magistrates he is nevertheless deemed to have been disqualified. The rationale

behind this is that the factor which magistrates are required to take into consideration in the exercise of their discretion, namely hardship, is a factor the courts say licensing committees should not take into account in determining whether a driver is a fit and proper person.

Where a driver does not meet the council's policy and wishes an exception to be made the burden of proof is upon the driver to satisfy the committee on the balance of probabilities that there are grounds for making an exception. Mr Drinkwater on behalf of Mr Foreman points out that in 8 days' time 3 points drop off of the licence. However that would not bring Mr Foreman back within licensing standards as he is deemed to have been disqualified on the date of his last conviction. That is not therefore a factor which would support a departure from policy. It was also submitted that Mr Foreman has a need to drive for reasons connected with his family but he does not need a private hire driver's licence for that. Finally it was submitted that Mr Foreman was not driving in a professional capacity when any of the offences occurred. However the committee are concerned at the pattern of driving. All four offences which placed Mr Foreman in jeopardy of losing his licence were for excess speed. Although Mr Foreman may not have been detected speeding when carrying passengers given his history there is a high risk that he may speed between jobs. Knowing he had 9 points on his licence and was therefore liable to face a disqualification if there was a further offence nevertheless he broke the speed limit yet again to acquire another 3 points. Further there are aggravating factors with regard to at least 2 of the offences. For one offence Mr Foreman stated he was driving at 48 – 49 mph in a 40 mph limit in thick fog. On his most recent conviction he was travelling at 71mph in a 60 mph variable speed limit. Variable speed limits are imposed because of hazardous conditions.

Mr Foreman has not satisfied the committee that there are any grounds for it to depart from its policy. As Mr Foreman does not meet the council's licensing standards the committee are satisfied that he is no longer a fit and proper person to hold a licence and his licence will be revoked under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976.

As the reason for revocation is the manner of Mr Foreman's driving the committee considers it necessary in the interests of public safety that this revocation should have immediate effect and this decision constitutes notice under s.61(2B) to that effect.

LIC14

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

Councillor Hicks left the meeting.

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Licensing Officer presented her report. The applicant had applied for a licence on 17 May 2016. On the application form applicants were asked to disclose all convictions, both spent and unspent. The applicant disclosed two

convictions; one for obtaining property by deception in 1972 and a 12 month licence disqualification in 1987.

The Council was required to obtain an enhanced DBS check for each applicant. The applicant's check revealed the conviction for Obtaining Property by Deception in 1972 for which he received a sentence of three months' imprisonment suspended for twelve months. It also revealed a conviction on 19 December 1983 for Criminal Damage for which he received a fine of £40 and Driving a Motor Vehicle while unfit through drink or drugs for which he was disqualified from driving for 12 months fined £100.

The Licensing Officer explained that the driver did not meet the Council's licensing standards as although his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, the Council's licensing standards stated that 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".

She had spoken to the applicant on 16 June 2016 and asked him about the circumstances surrounding his convictions. Regarding the conviction in 1972, the applicant explained that he was 21 at the time. He and his girlfriend of the time at decided to buy clothes for a holiday on a credit card. After the holiday they split up and his ex-girlfriend contacted Barclaycard to report that the card had been stolen at the time of the purchases. His ex-girlfriend involved him in the investigation and they were both convicted and given suspended sentences.

On 20 June the applicant was contacted about the conviction as it seemed harsh for a first offence. He confirmed that it was his only conviction and that the value of the clothes was in the region of £200. The applicant had said that he deeply regretted his convictions. In the last 30 years he had held a number of licences for public houses and nightclubs including the Railway Inn in Saffron Walden.

The Chairman invited the applicant to speak. He said that he was 21 at the time of the offence and had been naïve. He produced a character reference from the operator who he had known for long period of time. The applicant explained that he was an experienced publican who had been the licence holder for many public houses and nightclubs including the Railway Inn in Saffron Walden.

The Assistant Chief Executive – Legal said that were a driver did not meet the Council's licensing standards, there were four factors the Committee should have regard to when deciding to make an exception to policy. These were; the nature of the offence the seriousness of the offence the length or severity of the sentence and the passage of time since the last conviction.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 5.20pm so the Committee could consider its decision. They returned at 5.20pm.

DECISION

The applicant has applied to the council for the grant of a joint private hire/hackney carriage driver's licence. On his application form he declared that he had a conviction for obtaining property by deception in 1972. For this offence he received a sentence of three months' imprisonment suspended for 12 months.

The Council's Licensing Standards provide that drivers should not have had a conviction for an offence of dishonesty for which a custodial sentence has been imposed. It is for the applicant therefore to satisfy the committee on the balance of probabilities that there are grounds to make an exception to policy and that he is a fit and proper person.

The council's policy provides that in considering whether to depart from its policy the committee must consider four factors mainly the nature of the offence, the seriousness of the offence, the severity of the sentence and the length of time since the offence was committed. In the applicant's case the offence was one of dishonesty. Convictions for dishonesty are one of the statutory grounds for revoking a licence and it follows therefore that Parliament places great weight upon such offences. With regard to the seriousness of the offence the property obtained by deception was of low value and the offence was not therefore particularly serious. A custodial sentence for a first offence of theft is unusual and maybe considered severe. However it is now forty five years since the offence was committed and the applicant has not reoffended within that time. This is a very telling factor and in the circumstances the committee are satisfied that the applicant is a fit and proper person and his licence will be granted.

LIC15

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

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Licensing Officer presented her report. The applicant had applied for a licence on 6 April 2016. The applicant had been asked to provide his passport and copy of his DVLA photo card as proof of ID. She had asked the applicant about his appearance in both of the documents as they looked very different. The applicant explained that the photo on his driving licence was taken when he had his head shaved so his hairline looked different.

The Licensing Officer said that she had contacted both the Home Office and the DVLA to establish whether the photos were of the same individual. The Home Office passed the Licensing Officer's details onto the Immigration Compliance and Enforcement Team – East of England. They responded on 19 April 2016 and stated that they believed the documents were not for the same person. They added that the signatures were different, as were the head shapes and eyes in the pictures. The applicant then supplied a further picture which was also sent to the Immigration and Enforcement Compliance team. They

responded by stating that they believed the passport to be genuine, but repeated their belief that the driving licence was for a different person.

On 22 April 2016 the Licensing Officer contacted the DVLA's counter-fraud team about the concerns. In response the DVLA said they were satisfied that the driving licence was correct.

The application was referred to the Assistant Chief Executive – Legal who said that as the Council did not believe the two photographs were of the same person, he was not prepared to grant the licence under delegated powers. The applicant was advised of this by letter on 2 June 2016. The applicant responded and explained that he'd had problems with his ID before, but was happy to appear before Members. The Licensing Officer informed Members that the applicant had no criminal convictions or endorsements.

The applicant said that he'd experienced one issue with his driving licence before. This was as he went to complete the practical part of his driving test and the inspector asked his driving instructor to confirm that it was the same person.

The difference in the signature was due to the size of the signature box on the driving licence application form. He then explained that the photos on his passport and driving licence were taken two years and four months apart. After he'd passed his driving test he had put on weight as he did not need to walk as much. This meant that his face shape had changed. He then provided a number of photos which showed how his appearance had changed.

The Assistant Chief Executive – Legal said that the only factor Members had to consider was whether the photo on the driving licence was of the same person in front of them today.

The applicant, his friend, the Enforcement Officer and the Licensing Officer left the room at 5.50pm so the Committee could consider its decision. They returned at 5.55pm.

DECISION

The Chairman said that the Committee were satisfied the applicant was the same person as the one on the driving licence and the private hire/hackney carriage driver's licence was granted.

LIC16

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE – ITEM 6

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented his report. The driver currently held a licence which was due to expire on 31 October 2018. He currently carried out school contract work. On 13 May 2016, the Council received notification from Stevenage Borough Council that they had revoked the licence they had issued

to the driver because he had fraudulently carried out a language test for his cousin. The driver had lodged an appeal against this decision but had subsequently withdrawn his appeal.

A licensing officer at Stevenage Borough Council sent an email to the Council explaining the reasons for the revocation. In an Interview Under Caution the driver had admitted taking the English test for his cousin. On 10 June 2016, the Council received two letters from Stevenage Borough Council. The first was from the driver's solicitors where he admitted the offence. The second was from the Borough Council and confirmed the revocation of the licence.

The Enforcement Officer said that on 14 June 2016, the driver attended the Council Offices for an Interview Under Caution. He explained that he completed the language test on behalf of his cousin, as his cousin was unemployed at the time, had five children and was anxious about completing the test. The driver said that an officer at Stevenage Borough Council had told him that he could do the test instead of his cousin. He had assumed that the Council needed licensed drivers. He never paid the Borough Council any money or spoken to the officer before. He understood that the officer had been suspended and was currently being investigated.

When asked why he withdrew his appeal against the revocation of a licence, the driver explained it was a fact that he had taken the test and did not want to waste any more time, money or energy. He understood that the Borough Council were likely to prosecute him.

Lastly, he explained that he had been a licensed driver since 2012 and had never received any complaints and had never been convicted of any offence before.

The Enforcement Officer said that the driver did not meet the Council's licensing standards as he had a private hire licence revoked within the previous three years. He was therefore before Members to consider whether he remained a fit and proper person to hold a private hire licence.

The Chairman invited the operator to speak on behalf of the driver. She began by providing background information about the driver. She explained that Stevenage Borough Council had a much more elongated process for driver's licences which involved knowledge, language and practical driving tests. The driver had passed all of these and was currently carrying out school contract work. She then read out a number of character witnesses in support of the driver.

The operator said that as soon as the driver became aware of the issue he informed her. He had a family to support and had no convictions of any kind. He posed no risk to the public.

The driver said that whilst he had been a driver in Stevenage he estimated that he had carried around 2,000 people and had received no complaints. He always tried to be honest and took the test on behalf of his cousin on the spur of the moment. He felt remorse for his actions.

In response to a question by the Enforcement Officer, the operator said that Stevenage had not brought any charges yet. If this situation changed she would inform the Council.

The Assistant Chief Executive – Legal clarified that if no further action was to be taken, the driver would be informed of this. Therefore Stevenage’s investigation was still ongoing. He then said that the driver did not meet the Council’s licensing standards as he’d had a licence revoked by another authority in the last three years. Where a driver did not meet the Council’s licensing standards the burden of proof was on the driver to satisfy the Committee that there were grounds to depart from policy.

The driver, the operator and the Enforcement Officer left the room at 6.20pm so the Committee could consider its decision. They returned at 6.30pm.

DECISION

The driver is licensed by this Council as a private hire/hackney carriage driver. He was granted his licence on 25 November 2015. Prior to being licensed by this council the driver was licensed by Stevenage Borough Council. However that licence was revoked on 3 December 2015. The reason behind that revocation was that the driver was being investigated for an offence of fraud. The allegation was that he took an English test, which is part of Stevenage’s requirements before granting a licence, on behalf of a third party.

The driver lodged an appeal against the revocation with Watford Magistrates Court. However before the appeal was heard he decided to withdraw it. He then surrendered his licence to Stevenage Borough Council. The committee understands that investigations concerning the fraud are ongoing and that the driver may well face charges for the offence.

The driver has admitted the offence to Stevenage Borough Council through his solicitor and is also admitted it today. He said that he took a language test for his cousin in 2013. His cousin was unemployed at the time and had five children. He was anxious that he may not pass the test. The driver said that he explained this to an officer in the licensing department at Stevenage and that she gestured to him in a way which suggested to him that he should take the test on his cousin’s behalf. However, he acknowledges that the officer did not say anything to him which suggested that he should do so.

The Council’s licensing standards provide that a driver who has had a licence revoked within the past three years is not usually considered to be a fit and proper person. Had the council been aware of the revocation at the time the licence was applied for the probability is that the Assistant Chief Executive Legal would have refused the application under delegated powers.

Where a driver does not meet licensing standards the burden of proof is upon him on the balance of probabilities to establish that there are good grounds for the council to make a departure from its policy. No such grounds have been put forward by the driver to date. As a matter of public policy it cannot be right

that a driver can have his licence revoked by another authority and then without challenging that decision by way of appeal to then be licensed by another authority unless it is completely clear that the decision to revoke the licence by the first authority was wrong, but that is not the position in this case. The offence of fraud is an offence of dishonesty. Convictions for offences of dishonesty are one of the grounds for revocation of a licence. Although the committee acknowledge that the driver has not been convicted as he has freely admitted the offence there is no prospect of an acquittal if a prosecution is brought by Stevenage. In the circumstances the committee is satisfied that Mr Stemate is not a fit and proper person and his private hire/hackney carriage driver's licence will be revoked.

LIC17

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE – ITEM 7

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented his report. The driver currently held a licence due to expire on 30 April 2019, and first granted on 9 May 2016. He applied for a licence on 26 April 2016 but did not answer questions 4 or 5 on the application form. Question 4 asked "have you ever been refused or had revoked or suspended a hackney carriage or private hire driver's licence?" The Council contacted the operator who was able to confirm with the driver that his answer to the question was "no".

Applicants were also required to complete a statutory declaration, which the driver did at a solicitor's in Stevenage. "So far as I am aware I have not been the subject of any investigations regarding any possible criminal offences." The driver stated that he had nothing to declare.

The Enforcement Officer explained that the Council had been notified by Stevenage Borough Council that they had revoked the driver's licence that he held with them for fraudulently completing two language tests for two other individuals. The Borough Council sent an email to the Council which explained that they had interviewed the driver under caution where he admitted to taking the two tests. The Council also received a copy of the letter sent by the Borough Council to the driver which confirmed that his licence had been revoked.

If the Council had been aware of the revoked licence it was unlikely that he would have been granted a licence. Making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

The driver attended the Council Offices for an interview under caution, which was conducted by an Enforcement Officer and the Enforcement Team Leader. The driver read out the declaration and confirmed that he filled in the application by himself. He hadn't completed questions 4 and 5 as he claimed he had sent in a letter with his application form which explained what had happened with

Stevenage Borough Council. He had handed his form (along with the letter) to his operator to submit to the Council.

The driver explained that he had received a letter from the Magistrates Court which explained that he had lost his appeal on 10 June 2016 and had been ordered to pay costs. He explained that he had paid the appeal fee, but could not afford the solicitor's fees. He then surrendered his licence and assumed the appeal had been abandoned. The driver was asked about the emails on 9 June 2016. He said he had given the answers to the operator so they could answer on his behalf, but from talking to Stevenage Borough Council had thought that his licence with them had only been temporarily suspended. He confirmed that the fraud investigation was still ongoing. When asked why he did not disclose the investigation on his statutory declaration he said that he did not know fraud was a criminal offence.

The Enforcement Officer said that the driver did not meet the Council's licensing standards as he had a private hire/hackney carriage driver's licence revoked in the last three years. The Assistant Chief Executive – Legal had reviewed the matter and had also authorised a prosecution for making a false statement in order to obtain a licence. This also meant that he did not meet the Council's licensing standards.

The Chairman invited the operator to speak on behalf of the driver. The operator said that currently the driver carried out school contract work and this was mainly for children with ADHD and autism. Once the driver became aware of the situation he informed her immediately. There appeared to be an element of coercion from Stevenage Borough Council to get drivers to complete tests on behalf of other people. The operator stressed that the driver did not carry out the test on behalf of family or friends.

There had been some confusion over whether or not an appeal had been lodged as initially Stevenage did not appear to be aware of an appeal. The driver then surrendered his licence and as a result did not believe that it had been either suspended or revoked.

The driver said that he had worked very hard to earn his silver plate in Stevenage. He had also chosen to work extra hours with another company instead of pursuing his appeal.

In response to a question by the Enforcement Officer, the operator said the driver continued to work for her company as well as at night for the other one.

The Assistant Chief Executive – Legal said that the false statement in order to obtain a licence was made in respect of the statutory declaration and not the application form as he did not answer the questions on the application. Making a false statement on a statutory declaration was an offence of perjury, but the Council had experienced difficulty when prosecuting for perjury before due to the conduct of the Crown Prosecution Service. It had therefore voluntarily reduced the severity of the offence to making a false statement to obtain a licence. As the driver did not meet the Council's licensing standards, the burden

of proof was on the driver to satisfy the Committee that there were grounds to depart from its policy.

In response to questions by the operator, the Assistant Chief Executive – Legal said that the Police was not the only authority that could prosecute for a criminal offence. Local authorities could also prosecute for a criminal offence.

The driver, the operator and the Enforcement Officer left the room at 7pm so the Committee could consider its decision. They returned at 7pm.

DECISION

The driver was granted a joint hackney carriage/private hire driver's licence by this council on 9 May 2016. Prior to that he was licensed as a driver by Stevenage Borough Council. On 4 December 2015 Stevenage Borough Council revoked the driver's licence on the ground that he was being investigated for fraud. The allegation was that the driver had taken a language test (which is a requirement of Stevenage Borough Council for licensing drivers) on behalf of a third party on two occasions. The Council has been informed by Stevenage Borough Council that the driver was interviewed under caution on two occasions namely on 30 November 2015 and on 15 March 2016 when he admitted the two offences. The Committee understands that Stevenage Borough Council's investigations are continuing and that the driver is likely to face a prosecution.

When submitting his application for a licence the driver submitted a statutory declaration in support. One of the statements in that declaration read that 'so far as I am aware I have not been the subject of any investigations regarding any possible criminal offences'. That statement was quite clearly false. The Assistant Chief Executive Legal explained that making a false statutory declaration is an offence of perjury. However such offences can only be prosecuted with the consent of the Director of Public Prosecutions. On an occasion in the past where consent had been obtained the case had collapsed due to the conduct of the CPS and for that reason rather than seek a prosecution for perjury the council will be prosecuting the driver for the lesser offence of making a false statement to obtain a licence.

Had the council known of the revocation of his licence by Stevenage Borough Council the probability is that the Assistant Chief Executive Legal would have refused the application for a licence under delegated powers. However the revocation had not been disclosed.

The driver now fails to meet the council's licensing standards for two reasons. Firstly he has had a licence revoked within the last 3 years. Secondly he has a pending prosecution for making a false statement to obtain a licence.

Where a driver does not meet licensing standards the burden of proof is upon him on the balance of probabilities to establish that there are good grounds for the council to make a departure from its policy. No such grounds have been put forward by the driver to date. As a matter of public policy it cannot be right that a driver can have his licence revoked by another authority and then without

challenging that decision by way of appeal to then be licensed by another authority unless it is completely clear that the decision to revoke the licence by the first authority was wrong, but that is not the position in this case. The offences of fraud and making a false statement to obtain a licence are offences of dishonesty. Convictions for offences of dishonesty are one of the grounds for revocation of a licence. Although the committee acknowledge that the driver has not been convicted as he has freely admitted the offence of fraud there is no prospect of an acquittal if a prosecution is brought by Stevenage. Similarly the committee can see no defence to the charge of making a false statement. In the circumstances the committee is satisfied that the driver is not a fit and proper person and his private hire/hackney carriage driver's licence will be revoked.

The meeting ended at 7pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 18 JULY 2016**

Present: Councillor R Chambers (Chairman)
Councillors T Goddard, E Hicks and S Morris

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

Also Present: Mr B Drinkwater, Mr I Cronshaw, the applicant in relation to Item
3, the driver and her manager in relation to item 4 and the driver in relation to
Item 5.

LIC18 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

**LIC19 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE AND
SEVEN HACKNEY CARRIAGE VEHICLE LICENCES – CROWN CARS**

The Enforcement Officer produced an email from the operator (Mr Asif), which
requested that the item was adjourned as he had not received the report and
background papers in the post and had been given insufficient notice of the
meeting in order to arrange legal representation.

RESOLVED that the matter was adjourned until the extraordinary
Committee meeting on 18 August.

Mr Drinkwater and Mr Cronshaw left the meeting.

LIC20 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.

**LIC21 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE – ITEM 3**

The Chairman read out the procedures for determining private hire/hackney
carriage driver's licences.

The Licensing Officer presented her report. The applicant had applied for a
private hire driver's licence in November 2015. On the application form

applicants were required to disclose all previous convictions, both spent and unspent. The applicant attached an enhanced DBS check dated 14 April 2014 and disclosed a conviction for Conspiracy to Pervert the Course of Justice in 2003 for which he was sentenced to 12 months imprisonment. The Council was required to obtain an enhanced DBS check for each applicant. The Check dated 6 June 2016 revealed an offence of Conspiring/Committing Act/ Series Acts with Intent to Pervert the Course of Justice.

The applicant did not meet the Council's licensing standards, as although all of his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, the Council's licensing standards stated that drivers 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 explained that the applicant had submitted a statement along with his application. In the statement the applicant explained that his son-in-law had been involved in a traffic accident in September 2002. His daughter asked him to state that he had been with his son-in-law at home at the time of the accident, which he did. Neither he, nor his daughter, were aware of the circumstances surrounding the accident. When he became aware that his son-in-law had been involved in a traffic accident which had resulted in the death of a pedestrian he admitted to the Police that he had made a false statement.

His judgement had been impaired at the time as he was facing persecution due to his religious beliefs in Pakistan, had faced prolonged isolation from his family. Following this, his step-daughter in Germany and father-in-law in Pakistan had both passed away. Additionally, his daughter was pregnant at the time of the accident and he was worried about the future of her marriage if he did not give a false statement.

The applicant served 4 months of his 12 month sentence and for the remaining 8 months he was released with an electronic tag. He had no convictions since 2003.

The Chairman invited the applicant to speak. The applicant said that the conviction was a misfortune and that it had been 13 years since the conviction. When he had lived in Pakistan he had worked for various law firms. When he moved to London he held a taxi licence, but did not use it. Instead he worked for a number of solicitors. After he moved to Stevenage he was granted a licence to work as a passenger assistant and worked on school contracts which dealt with disabled children. He wanted a licence so that he could help to serve the community. Lastly he referred to his previous submissions to the Council which detailed the circumstances surrounding the conviction.

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

There were four factors the Committee should have regard to when deciding whether they should make an exception to policy. These were; the nature of the

sentence; the severity of the offence; the length or severity of the sentence; the passage of time since the conviction.

The Assistant Chief Executive – Legal informed the Committee that under the Council's previous licensing policy the applicant would have met the Council's licensing standards as the conviction would have been spent under the un-amended version of the Rehabilitation of Offenders Act 1974.

The Enforcement Officer, the Licensing Officer and the applicant left the room at 10.20am so the Committee could consider its decision. They returned at 10.35am.

DECISION

The applicant has applied to this council for the grant of a joint hackney carriage/private hire driver's licence. On the application form he was asked to list all convictions, both spent and unspent. The applicant attached an enhanced DBS certificate which was out of date but disclosing one conviction for conspiracy to pervert the course of justice in March 2003 in respect of which he was sentenced to 12 months imprisonment. This conviction was confirmed by the DBS check carried out by the council in connection with the application.

The council's licensing standards state 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. A conspiracy to pervert the course of justice is an offence of dishonesty for which the applicant was given a custodial sentence. He therefore does not meet the council's licensing standards.

The applicant was interviewed regarding his conviction. He stated that his son-in-law had been involved in a road accident in September 2002. His daughter asked the applicant to say that his son-in-law had been at home with him at the time. The applicant did this. He maintains that neither he nor his daughter were aware of the circumstances surrounding the accident and that he did not ask his son-in-law why he had asked him to lie for him. He states that he was not aware of the true situation and he was arrested in October 2002 by which time he had discovered that his son-in-law had been the driver of a vehicle which was involved in a fatal road traffic accident. Immediately the applicant was told about the accident he admitted to having made a false statement.

Where an applicant wishes the committee to make an exception to policy the burden of proof is upon the applicant to satisfy the committee on the balance of probabilities that there are good grounds for doing so. In considering such an application the council's Licensing Policy requires the committee to have regard to four factors, 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. An offence of perverting the course of justice is clearly one of dishonesty. A conviction of an offence of dishonesty is one which Parliament singled out as being a ground for revocation of a driver's licence and it follows therefore that Parliament gave great weight to such convictions when passing the legislation. With regard to the severity of the offence conspiracy to pervert the course of

justice is a serious matter but the committee note that it was not committed for personal gain and that the applicant made a full admission once the circumstances were drawn to his attention. With regard to the length or severity of the sentence 12 months for a first offence would normally be regarded as being severe but the committee take note of the fact that the sentence was probably increased by virtue of the fact that the applicant was engaged in the legal profession at the time the offence was committed. The main fact in the applicant's favour is the passage of time since conviction. This is the only offence of which the applicant has ever been convicted. It is now 13 years old and he has shown his remorse. The committee do not believe that there is a likelihood that the applicant will re-offend. In the circumstances, the committee are satisfied that he is a fit and proper person to hold a driver's licence and his licence will be granted.

LIC22

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

The Chairman read out the procedures for determining private hire/hackney carriage driver's licences.

The Enforcement Officer presented his report. The driver had been licensed by the Council since 24 July 2015 and her licence had expired on 30 June 2016. On her renewal application dated 3 June 2016, when asked "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?" she answered "No".

The Council carried out an online driver check of DVLA records as part of the renewal process on 13 June 2016. This showed she had received an SP30 speeding offence on 21 October 2015 for which she received three penalty points.

The Enforcement Officer informed the Committee that making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976. The driver attended an Interview Under Caution under 29 June 2016. At this meeting the driver confirmed that she had completed the renewal form herself. At the time of completing the application she had just had a cancer scare and had not been concentrating properly. She had remembered the speeding offence and ought to have amended her answer before her manager submitted the form to the Council, but it was too late by time she thought of it. She did not contact the Council as she thought it would just go away. This was her first speeding offence in 30 years. She thought her manager would contact Hampshire County Council as she drove on their contracts. It did not occur to her to notify Uttlesford District Council.

The Enforcement Officer said the matter had been reviewed by one of the Council's solicitors, who had authorised a prosecution for the offence of making a false statement in order to obtain a licence. As a result of the pending prosecution the driver now fell below the Council's licensing standards.

The Chairman invited the driver to speak. The driver said that she had completed the renewal form at the same time that she had a cancer scare, which would have been the reoccurrence of throat cancer which she had successfully undergone treatment for a couple of years ago. She had not read the renewal form properly and had missed the part which asked for motoring convictions. Her family all worked as drivers and prior to being a driver herself, she had worked in their office so she should have been more careful when completing the form. The omission of the offence was not malicious, it was just a mistake. She explained that she had no convictions of any other kind.

The driver's manager said that he was aware of the speeding offence and should have noticed that it had not been included on the renewal form. He did not believe that the driver would have deliberately failed to disclose the offence.

The driver clarified the circumstances surrounding her diagnoses with cancer in response to a question by Councillor Goddard. She explained that she had first been diagnosed with throat cancer a couple of years ago. Before she completed her renewal form she had been experiencing pains in her throat and had thought that the cancer might have returned.

In response to a further question by Councillor Goddard about her family's history as private hire drivers, she said her father had been a black cab driver. Her brother had been working as a private hire driver on and off for the last 15 years.

The Assistant Chief Executive – Legal clarified that if the Committee were minded to renew the driver's licence they would have to consider what punishment, if any, the driver should receive for her failure to notify the Council in writing within seven days. If they suspended the driver they needed to have regard to any financial impact the suspension would have in order to ensure it did not cause her undue hardship.

In response to questions about her earnings, she disclosed that she was not paid during the school holidays, but during school time she worked 20 hours a week and was paid £7.20 per hour. She also worked at a supermarket which would give her additional hours when other staff were on holiday.

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

There were four factors the Committee should have regard to when deciding whether they should make an exception to policy. These were; the nature of the offence; the severity of the offence; the length or severity of the sentence; the passage of time since the conviction.

He added that the driver was obliged to notify the Council of any fixed penalty notice she received within seven days. She had admitted that she had not read the licensing conditions properly and had thought the Hampshire should be notified instead of Uttlesford.

The Enforcement Officer asked whether the Committee should have any regard to the fact the driver may not meet Group 2 medical standards. In response, the Assistant Chief Executive – Legal explained that the driver had met the standards previously and the Committee could not go behind this fact.

The Enforcement Officer, the driver and her employer left the room at 11.10am so the Committee could consider its decision. They returned at 12pm.

DECISION

The driver has been licensed by this council as a joint private hire/hackney carriage driver since July 2015. Her last driver's licence expired on 30 June 2016. She has applied to renew it. The application form for renewal contains 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 any prosecution pending against you?" The driver answered this question "no".

As part of the renewal process the council carries out an online driver check of DVLA records. The check in respect of the driver revealed a fixed penalty for a speeding offence on the 21 October 2015 for which she was endorsed with 3 penalty points. Making a false statement to obtain a licence is an offence under s.57(3) Local Government (Miscellaneous Provisions) Act 1976. The driver was interviewed under caution by two enforcement officers. The driver confirmed that she completed the renewal form. She stated that at the time of completing the form she had a cancer scare and was not properly concentrating. She said that she remembered the speeding offence and felt that in hindsight she should have amended the answer after she had sent it to her manager but before he submitted it to the council but it was too late by the time she thought of this. The driver did not contact the council after the form was submitted as she thought the matter would go away.

Under the conditions of her licence, the driver ought to have notified the council of the fixed penalty notice in writing within 7 days of receipt of the same. The driver said she told her manager about the points in October 2015 and thought that he would tell the relevant council which she thought to be Hampshire as she was driving on their contacts. She said it never occurred to her to notify Uttlesford District Council.

In the absence of the Assistant Chief Executive – Legal, a solicitor in the Legal Services team exercising delegated powers authorised a prosecution of the driver for making a false statement to obtain a licence. As a result of this pending prosecution the driver does not meet licensing standards.

On the renewal of a licence the committee should only refuse a licence if it is satisfied the applicant is not a fit and proper person. Having heard of the driver's personal circumstances the committee is not satisfied that this is the case. Her licence will therefore be renewed. However the committee does take a very dim view of both her failure to notify the council of the fixed penalty notice in writing within 7 days and her failure to disclose the notice in her application to renew.

With regard to the breach of condition the driver says she did not think Uttlesford was the appropriate council to inform of the fixed penalty notice and that she had notified her employer believing that her employer would notify the council concerned. She said it would not have occurred to her to notify Uttlesford. The committee regard this explanation as being wholly unacceptable. The application form for her licence was on paper headed with the Uttlesford logo. The covering letter sending her the licence was on Uttlesford headed paper. Her driver's licence bears the Uttlesford logo. She can be under no illusion who she is licensed by. The conditions of the licence are crystal clear that fixed penalty notices must be reported by the driver, not the operator, to the council, in writing within 7 days of being received. It appears to the committee that either the driver did not read the conditions or did not read them properly despite the fact that she would have signed an acknowledgement of receipt confirming that she was to be bound by such conditions.

The committee do regard breach of this condition as a serious matter and the council's licensing policy provides that a breach of condition should normally be dealt with by a suspension the starting point for which is 5 days. This may be increased or decreased depending on whether there are aggravating or mitigating circumstances.

In this case there are aggravating factors. The first of these the ignorance displayed by the driver of her licence conditions. The committee expect all licensed drivers to be aware of the conditions of their licence and to observe them. The second aggravating factor is that the driver did not disclose the conviction on her application to renew. This is an offence for which she is facing prosecution.

The committee consider it desirable to deal with both matters by way of suspension. It therefore directs the Assistant Chief Executive – Legal to discontinue the prosecution against the driver. In determining the length of the suspension the committee must have regard to the financial impact of a suspension upon the driver. The driver earns £7.20 an hour from her employer for a 20 hour week. This equates to £144 per week. However she does not do any work during school holidays and the impact of any suspension will also be mitigated by the fact that she may have the opportunity of additional hours with another employer for which she works. In the circumstances the committee considers the appropriate length of the suspension would be 31 days.

The committee therefore suspend the driver's driver's licence for 31 days under s.61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause namely breach of a condition on her licence and the offence of making a false statement on her application to renew.

The committee also wish to express its disapproval of the conduct of the operator with regard to this matter. The driver's manager who is here today acknowledges that he was aware of the fixed penalty notice. However it seems that he did not advise the driver that her conditions of licence required her to report the notice in writing to Uttlesford within 7 days. The committee expect operators to be aware of the conditions which apply to their drivers and to assist

their drivers comply with them. Further it is accepted that the completed application form was sent to the operator to be forwarded to Uttlesford. Clearly no proper check was made as to the accuracy of the form as had that occurred the driver would have amended it before submitting it. Questions may be raised in the future as to whether operators who fail to give proper support to their drivers are fit and proper persons to hold operators' licences.

The Assistant Chief Executive – Legal explained that there was a right to appeal the decision within 21 days of having been deemed to have received a notice of the decision. If no appeal was lodged the suspension would take place after the appeal period had elapsed.

LIC23

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

The Chairman read out the procedures for determining driver's licences.

The Enforcement Officer presented his report. The driver had been licenced by the Council since 7 December 2010, with his licence due to expire on 30 November 2018. He had been carrying out school contract work, but was no longer permitted to do so. Therefore, he was now carrying out traditional private hire work.

On 29 June 2016, the Council received an email from Essex County which asked whether the Council was aware of the allegations made against the driver. The Council had not been made aware so the allegations were forwarded.

On 4 February, the operator was notified by the County Council that the following allegations had been made about the driver; three children who had been interviewed separately said he had told them to "stop being little bitches"; one of the parents said the driver makes inappropriate comments about the clothes the girls wear and made fun of one of the girls voices; another parent alleged that the driver called her daughter a "sexy beast".

Following this, the driver was interviewed by his operator. The driver was apparently distraught at the allegations and denied them. Often the children could be rowdy and he often had to stop during journeys as children often threw things. The operator was of the opinion the children probably misheard what was said.

The Enforcement Officer explained that on 20 April 2016, the County Council concluded there was not enough evidence to proof the allegations, but did remove the driver from that contract. He was still able to carry out other County Council contracts.

On 14 June 2016, the County Council received a safeguarding report the Local Authority Designated Officer (LADO) about an incident at a school for children with social, emotional and mental health issues where the driver had been asked to take a group of students to Chelmsford Museum. The driver had

experienced some trouble with one of the children a couple of weeks before and told the boy he wasn't allowed in the vehicle. He opened the door for the other children, but he told the remove that if he got on the vehicle he would remove him. The boy got in the vehicle so the driver grabbed him by the arm to try and pull him out. At this point a teacher interjected and told all the students to exit the vehicle. The driver was asked to leave and another vehicle was called.

The Enforcement Officer explained that as a result of this the driver was removed from all County Council contracts. The driver then sent in a letter to the County Council to give his version of events. The boy had stolen the safety hammer from the vehicle the previous week. He banned the boy from the vehicle at that time. The boy had used offensive language so he jumped onto the bus to remove him. It was at this point the teacher intervened and told the driver he was not needed.

The Council had received two incident reports from staff at the school. The first report stated that when the driver arrived, he jumped out of the vehicle and said he would not allow the boy in the vehicle as he had stolen the hammer the previous week. The staff tried to reason with the driver but he would not listen. When the boy tried to enter the vehicle, the driver grabbed his arm tightly. They told the driver to let go, but he wouldn't listen. They had to pull the driver off the boy. Two other members of staff had to calm down the children as they were upset. The driver was asked to leave and told that he would be reported.

The other staff member had stated she had previously requested that the driver should not transport their pupils as he had previously made inappropriate comments. When the driver saw the boy he told he was not getting in the taxi. The staff member said the boy had not been banned and the hammer he had stolen was returned after 30 seconds. As the boy went to sit down the driver grabbed his arm. Staff intervened and asked the driver to leave. They photographed the child's arm which had red marks and light red scratch marks.

The Enforcement Officer said that on 18 July, he carried out a telephone interview with the driver. When asked about calling the girls "silly little bitches" the driver explained that the children were mucking about and fell into him. He told then asked them "why did you do that as I could have gone in a ditch?" He denied the other allegations and said he had a letter which said they were not proven.

Regarding the incidents at the school, the driver explained that he told a teacher that he would not transport the boy again when the boy took the hammer from the vehicle. The teacher had said that he would deal with the incident.

The following week as he arrived at the school, the boy swore at him, so the driver said the boy was not allowed on the vehicle. He explained to the teacher present that he could ban passengers himself as a PSV driver. The driver explained the boy jumped into the vehicle. The driver only grabbed the boy by the hand, and not by the arm. He did not leave any scratch marks. The teacher had only entered the vehicle as the whole party had walked to Morrisons and

realised the child was not there. The teacher had not told him that the other children were upset and as a result they had decided to walk.

The Chairman invited the driver to give his account of the events. The driver began by speaking about the incident at the school. He said that all the teachers went off to Morrisons and left him alone with the boy. It was only after they realised that the boy was not in their group that they returned.

The driver then spoke about the first incident. He explained that he had carried out the contract for two years. Some of the boys used to make fun of one of the girls because she had a squeaky voice. As a result there was an agreement with the school that she would sit at the front. This was part of a bus monitor scheme. Another girl was sitting at the front because it was her birthday and she had asked to sit at the front. They started pushing each other and one of the girls fell into the driver. This caused him to say "Why did you do that as I could have gone in a ditch?" which the girls had misheard. The head teacher of the school was not aware of the bus monitor scheme and lacked knowledge of its procedures. He was exonerated of all the claims made against him.

Prior to working on school contracts, he was a coach driver and worked across a number of different countries.

Councillor Morris asked the driver about the age range of the pupils at the school in Finchingfield. The driver explained that the school had children from ages 5-16. In response to further questions by Councillor Morris, he explained that he had felt it necessary to have the girl in the front of the vehicle with him. The school had agreed to this. His work only entailed driving the children to and from school. He had developed a good relationship with one of the girls and had offered to drive her to an appointment as her parents were not able to.

The driver then answered questions about the incident at the school whilst he was working as a PSV driver. He explained that the work was not contracted. The pupils were often abusive towards both the teachers and the general public, but the teachers were unable to do anything as they could not touch the pupils.

The hammer contained within the vehicle had to be signed off every day and the Police needed to be notified if it was lost. If the hammer was lost he would be fined by VOSA. Parts of the teacher's stories were made up. They were aware that the child had been banned from the vehicle.

The driver said that he had worked as a driver for 47 years. When he was first given his private hire licence he had been told to report all instances which occurred on his vehicle, which he did. The work as a PSV driver was not on an Uttlesford licensed vehicle so he did not report it to the Council.

The Assistant Chief Executive – Legal said that the Committee could only consider whether the driver was a fit and proper person to hold a licence. The driver currently met licensing standards so the Committee would have to be satisfied on the balance of probabilities that the driver was not a fit and proper person if they were minded to revoke the licence.

The Enforcement Officer and the driver left the room at 12.50pm so the Committee could consider its decision. They returned at 1.10pm.

DECISION

The Chairman said that the Committee were not satisfied that the driver was not a fit and proper person to hold a private hire/hackney carriage driver's licence and therefore no further action would be taken.

The Chairman said that it was the Assistant Chief Executive – Legal's last meeting before he retired. On behalf of the Committee, the Chairman thanked the Assistant Chief Executive – Legal all of his work during his time at the Council. The Chairman said he hadn't always agreed with him, but always appreciated and respected the advice that was given.

Councillor Hicks spoke as a former chairman of the Committee. He said the Assistant Chief Executive – Legal had been an enormous help during his time as chairman and had learnt a great deal about licensing whilst he had been on the Committee.

The meeting ended at 1.15pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 18 AUGUST 2016**

Present: Councillor R Chambers (Chairman)
Councillors A Anjum, J Davey and S Morris

Officers in attendance: M Chamberlain (Enforcement Officer), A Rees
(Democratic and Electoral Services Officer), E Smith (Solicitor)
and A Turner (Licensing Team Leader)

Also Present: Miss V Powell and Mr S Sparrow (Essex Police), Miss Cox (The
Restaurant Group) and Mr H Thomas (Harrison Clark Rickerbys
Solicitors).

LIC24 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

The Committee agreed to determine Item 3 first.

**LIC25 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE AND
SEVEN HACKNEY CARRIAGE VEHICLE LICENCES – CROWN CARS**

The Chairman said that the operator (Mr Asif) had emailed the Enforcement
Officer and stated that he would be surrendering his private hire operator's
licence, as well as the seven hackney carriage vehicle licences. The Chairman
explained that it was still necessary for the Committee to determine the
licences.

The report was taken as read.

Councillors Anjum, Chambers, Davey and Morris, the Democratic and Electoral
Services Officer and the Solicitor left the room at 10.05am so the Committee
could consider its decision. They returned at 10.10am.

LIC26 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.

DECISION

The Chairman said that the Committee were not satisfied that the operator was operating within Uttlesford and therefore the private hire operator's licence and seven hackney carriage vehicle licences were revoked.

LIC27

APPLICATION FOR A REVIEW OF A PREMISES LICENCE – CAFÉ BALZAR & JOE'S COFFEE HOUSE, LANDSIDE, STANSTED AIRPORT

The Chairman read out the procedures for determining premises licences.

The Licensing Team Leader presented her report which followed an application to review a premises licence by Essex Police. She explained that Café Balzar & Joe's Coffee House had first been granted a licence on 2 December 2013. At the time no representations were made.

The current licence allowed for the following licensable activities; the sale of alcohol for consumption on the premises from Monday to Sunday and from midnight to midnight; the sale of late night refreshments (indoors) from Monday to Sunday from 11pm until 5am. The licence also contained conditions which meant that; management training would be given to prevent crime and disorder; health and safety assessments would be carried out by internal management staff; regular risk assessments would be carried out by internal management staff.

The Licensing Team Leader informed the Committee that no complaints had been received prior to those made by the Police. The Council issued and delivered a Notice of Review to the premises on 1 July, which was also displayed on the Council's website. Representations were invited to be made by 28 July and copies of the review application were served on all the statutory consultees. No representations were received.

The Police had requested that the premises licence was varied in order to achieve a minimum desired outcome. This was requested on the basis of three of the four licensing objectives. These were; the prevention of crime and disorder; public safety; and the prevention of public nuisance.

The request for a review followed two incidents at which the Police contended that alcohol was sold to already intoxicated persons. During one of these incidences the premises' management permitted disorderly behaviour to take place. The Police had stated that both of these incidents demonstrated poor management and the rejection of the Police's advice.

On 27 May 2016, the Police attended the premises following reports that a number of customers were intoxicated and causing a disturbance. The Police requested that all sales of alcohol ceased. An hour later the Police were called back after disturbance escalated. The incident was so severe that other police at the airport and from elsewhere throughout Essex were requested to attend.

Further inquiries by the Police had highlighted significant concerns about how the premises were managed on a day to day basis. Best practice guidelines

were not met and the Police had concerns about the DPS' ability to manage the premises in an orderly manner.

There was a further incident on 22 June, where a man who officers had already identified as being intoxicated was served alcohol to the point where he collapsed. The Police in their application stated that the Airport provided regular services to Europe where large groups of people often travelled together. Alcohol had been served to people who were already intoxicated which created disorder. This disorder had been permitted by the premises' management.

The Police had considered requesting revocation of the licence, but felt suitable conditions, as well as the removal of the current DPS, would negate the need for revocation of the licence. The conditions sought by the Police were as follows:

1. The premises licence holder shall erect and maintain clear and prominent notices that patrons who display antisocial behaviour will be ejected from the premise and be liable to exclusion from the airport.
2. An incident log shall be kept at the premises, and made immediately available on request to Essex Police or a representative of the Airport's management.

A copy of the log must be made and given to the police/airport management on demand.

The incident log must, within 24 hours, of an occurrence record:

- a) Any incidents of crime, disorder or anti-social behaviour;
- b) The refusal to sell alcohol (whether under-age, intoxicated or for another reason);
- c) Attendance of the emergency services;
- d) Any faults in the CCTV equipment;
- e) The name of the person entering the occurrence and (if different) the duty manager at that time.

Prevention of Crime and Disorder:

3. No disorderly conduct shall be permitted on the premises.
4. At any time whilst alcohol is being sold or offered for sale between 12:00 & 02:00 hours, a personal licence holder must be present on the premises.
5. No super-strength beer, lagers, ciders or spirit mixtures of 5.5% ABV (alcohol by volume) or above shall be sold at the premises.
6. The following condition shall apply specifically to prevent disorder arising from the sale of alcohol to, and consumption of alcohol by, groups assembled for a common purpose where such

consumption may reasonably be suspected to increase the risk of disorder.

Where Essex Police has identified an event (sporting or otherwise) taking place within the UK or Europe, and there exist police concerns regarding the potential behaviour of groups of intoxicated passengers travelling to or from that event, upon the written direction of an officer not below the rank of Chief Inspector:-

On the day preceding any such event, the premise shall not sell alcohol between 12:00 & 23:59 hours;

On the day of any such event, the premise shall not sell alcohol between 00.00 & 16:00 hours;

On the day following any such event the premise shall not sell alcohol between 00.00 & 11.00 hours; or

Where the direction specifies less prescriptive hours of sale than those set out within a), b) or c), shall not sell alcohol between those times.

CCTV will be provided in the form a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition and capable of meeting the below conditions:

Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale of alcohol occurs.

Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order, numbered sequentially and kept for a period of 31 days.

The Premises Licence Holder must ensure at all times a personal licence holder or other member of staff is capable of and competent at downloading CCTV footage in a recordable format either disc, memory stick or similar to the local police or airport management.

The recording equipment and tapes/disc shall be kept in a secure environment under the control of a named post-holder.

An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions are to be recorded.

CCTV installation and usage will accord with the British Security Industry Association Code of Practice and Associated Guidance for CCTV Surveillance Systems (July 2014 or later).

All staff making alcohol sales shall hold a BIIAB Level 1 Award in Responsible Alcohol Retailing (or a BIIAB Level 2 Award for Personal Licence Holders).

The Premises Licence Holder shall have in place written policies to deal with the sale of alcohol which includes underage sales (either a Challenge 25 or Challenge 21 age verification policy), sale of alcohol to intoxicated persons, disorder and violence, drugs and general crime reduction – together with a training regime (including conflict management) to ensure all staff are familiar with these policies.

Training records and policies shall be kept at the premises and shall be made available to the police or airport management on demand - either electronically or in hard copy.

The Licensing Team Leader informed the Committee that they could decide to; allow the licence to continue unmodified; modify the conditions of the licence; modify the conditions of the licence for a period not exceeding three months; exclude a licensable activity from the scope of the licence; exclude a licensable activity from the scope of the licence not exceeding three months; revoke the licence; remove the Designated Premises Supervisor.

The Committee also needed to have due regard to the Council's Licensing Policy, as well as the Secretary of State's Guidance issued in accordance with the Act. If the Committee decided to impose conditions, they could only impose conditions which were necessary and proportionate to promote the licensing objectives. Furthermore, any conditions could not duplicate the effects of existing legislation.

The Chairman invited Miss Powell to speak. She began by detailing the circumstances surrounding the incidents on 27 May.

Councillor Chambers declared a non-pecuniary interest as he knew Mr Sparrow.

Miss Powell explained that the Police had agreed conditions with the licence holder. The agreed conditions were as below:

1. The premises licence holder shall erect and maintain clear and prominent notices that patrons who display antisocial behaviour will be ejected from the premises and be liable to exclusion from the airport.
2. An incident log shall be kept at the premises, and made immediately available on request to Essex Police or a representative of the Airport's management. A copy of the log must be made and given to the police/airport management on demand. The incident log must, within 24 hours of an occurrence, record;
 - a. Any incidents of crime, disorder or anti-social behaviour;
 - b. The refusal to sell alcohol (whether under-age, intoxicated or for another reason);
 - c. Attendance of the emergency services;
 - d. Any faults in the CCTV equipment;

- e. The name of the person entering the occurrence and (if different) the duty manager at that time.
3. No disorderly conduct shall be permitted on the premises.
4. CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition and capable of meeting the conditions below;
 - a. Cameras shall encompass all ingress and egress to the premises, fire exits and all areas where the sale of alcohol occurs;
 - b. Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order, numbered sequentially and kept for a period of 31 days;
 - c. The premises holder must ensure at all times a personal licence holder or other member of staff is capable of and competent at downloading CCTV footage in a recordable format either disc, memory stick or similar to the local police or airport management;
 - d. The recording equipment and tapes/discs shall be kept in a secure environment under the control of a named post-holder;
 - e. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions are to be recorded;
 - f. CCTV installation and usage will accord with the British Security Industry Association Code of Practice and Associated Guidance for CCTV Surveillance Systems (July 2014 or later).
5. All staff making alcohol sales shall hold a BIIAB Level 1 Award in Responsible Alcohol Retailing or training to an equivalent standard.
6. The premises licence holder shall have in place written policies to deal with the sale of alcohol which includes underage sales (either a Challenge 25 or Challenge 21 age verification policy), sale of alcohol to intoxicated persons, disorder and violence, drugs and general crime reduction – together with a training regime (including conflict management) to ensure all staff are familiar with these policies.
7. Training records and policies shall be kept at the premises and shall be made available to the police or airport management on demand – either electronically or in hard copy.

Miss Powell said a review of the licence had been seen as necessary because due to the nature of the premises surroundings and the possible security implications an action plan would not have been sufficient. The agreed conditions had already been implemented and the Police had been reassured that the current DPS would ensure that the conditions would be met. Therefore the Police no longer requested that the current DPS was removed.

Miss Powell then responded to questions by Members. Councillor Morris noted that the agreed conditions were different to the conditions detailed in the report.

In response Miss Powell explained that the initially requested conditions were seen as too onerous.

The Chairman asked whether the training which had been implemented was satisfactory. In reply, Miss Powell said she had attended one of the training sessions which she explained was of a high standard.

Mr Thomas was then invited to speak on behalf on the premises licence holder. He said that Members could only consider the application for a review and the agreed upon conditions. He informed Members that the licence holder held over 550 licences across the country and had never had a licence revoked.

His client engaged with the Police immediately and has already imposed the agreed upon conditions. He then spoke about the seriousness of the incidents, which he noted had resulted in zero arrests. His client had sought to work co-operatively with the Police in order to agree conditions which promoted the licensing objectives.

Mr Thomas explained that some of the conditions sought to ensure that certain requirements were less ambiguous. Some of the agreed conditions ought to have been included in the initial conditions. He explained the rationale behind each condition in order.

Regarding the first condition he explained that it was a standard condition which should have been included previously. The second condition made it clear exactly what was required from the incident log. The third condition was also a standard condition. He noted that the Police had visited the premises and were happy this condition was being met.

Condition 4 concerned CCTV recording and retention. Mr Thomas explained that CCTV had always been on the premises, but it was accepted that the quality of coverage could be improved. The Police had evaluated the premises and his client was actively looking at implementing the requested changes. Regarding condition 5, he noted that Miss Powell had said she was exceptionally happy with quality of the training offered, which he explained was to a greater standard than that required by the condition.

Mr Thomas said the aim of condition 6 was to empower staff so that they could deal effectively with difficult situations. He and his client agreed with this condition. Lastly, condition 7 was a standard condition.

Mr Thomas said the conditions had changed from those previously requested by the Police due to engagement with the Police by himself and his client. It had been agreed that some of the initial conditions were disproportionate in order to meet the licensing objectives. Normally when events were due to take place, the Police would issue advice to premises and make requests such as only serving alcohol during certain hours. The imposition of conditions was seen as disproportionate.

Mr Thomas drew Members attention to the Section 182 Guidance. He explained that the Guidance asked licensing authorities to look to the Police as their main

source of advice. Any conditions should seek to address areas of concern and should be proportionate.

The Enforcement Officer asked whether the licensing authority could be referenced in conditions 4c and 7. Both Mr Thomas and Miss Powell agreed that the conditions should include reference to the licensing authority.

Councillor Chambers noted that airports deal with a diverse array of cultures and languages. He asked how the training addressed any difficulties which could arise from these differences. In response Miss Cox explained that the training looked at how body language and gestures could be interpreted and included a module on conflict management.

Miss Cox then explained that it was expected that customers would have no more than two drinks as most customers would not be on the premises for longer than one and a half hours. If a customer ordered further drinks staff would find out why.

The Solicitor informed the Committee that the conditions agreed by the Police and the licence holder were acceptable subject the agreed upon amendments.

Councillors Anjum, Chambers, Davey and Morris, the Democratic and Electoral Services Officer and the Solicitor left the room at 11am so the Committee could consider its decision. They returned at 11.50am.

DECISION

The Restaurant Group trading as Café Balzar hold a premises licence in respect of Unit LD7 in the Landside Terminal Building at Stansted Airport.

Following two incidents of disorderly behaviour involving the same persons at the premises on 27th May 2016 officers of Essex Police attended. No arrests followed and it is understood that those involved were not users of the airport. Subsequent enquiries by the Police revealed concerns regarding daily management of the premises and these concerns were exacerbated when they were again summoned on 22nd June 2016 when an obviously intoxicated person collapsed there having been served further alcohol.

As a consequence the Police sought a review of the licence involving the removal of the DPS and the addition of conditions to the licence.

However, the operator immediately engaged with the Police. It is understood that there have been considerable discussions between the two bodies and that a set of draft conditions have been agreed between them which are already being implemented. Miss Powell of Essex Police tells us today that significant improvement has already been noted, that the DPS is to remain in post with support and training, that the staff training regime in place is excellent and that the Police believe that the agreed conditions will enable the operator to cope in the future. There will be strict monitoring and we hope that this level of Police support will continue.

We have heard from Mr Thomas of Harrison Clark Rickerbys on behalf of the operator, and Miss Cox one of their senior employees. They both tell us that these incidents were wholly exceptional involving atypical customers, and Miss Cox outlined the modifications made to their training programme to address this. We accept, in accordance with Home Office Guidance, the view of the Police that the steps taken are sufficient to prevent a repeat incident of crime and disorder but should there be such an occurrence we would wish the matter to be brought back before this Committee.

Accordingly we accept the agreed conditions to be endorsed upon the premises licence with the addition of the authorised officer of the licensing authority to the list of persons to be notified and supplied with materials under clauses 2, 4(c) and 7 of the draft conditions.

The meeting ended at 11.55am.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 10am on 8 SEPTEMBER 2016**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey, R Gleeson and E Hicks

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden
(Principal Environmental Health Officer), J Jones (Licensing
Officer), A Rees (Democratic and Electoral Services Officer) and
E Smith (Solicitor)

Others present: Mr Cordall, Mr Davey and the driver in relation to Item 3.

LIC28 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

LIC29 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS'
LICENCE – ITEM 2**

The Chairman read out the procedures for determining drivers' licences. He then invited the Licensing Officer to present her report.

The Licensing Officer began by explaining that Mr Davey had applied for a licence on 3 July 2016. On the application form applicants were asked whether they had ever been disqualified from driving or had their licence revoked. Mr Davey had answered this question by stating that he had been banned from driving for six months under the totting up system.

The Council carried out online driver checks for all applicants. This revealed that Mr Davey's licence had been endorsed with a TT99 offence which indicated that his licence had been endorsed with 12 points within three years.

Mr Davey did not meet the Council's licensing standards as they stated that where a driver had been disqualified from driving a licence would not normally be granted until three years after the disqualification had expired. Therefore Mr Davey would not meet the Council's standards until 20 September 2017.

The Licensing Officer said she contacted Mr Davey and the operator, Mr Cordall, to advise them that Mr Davey did not meet the Council's standards. On 30 August Mr Cordall contacted the Council to ask whether Mr Davey could be issued with a licence as it had been two years since Mr Davey had been disqualified and he had learnt from his mistake.

On 30 August, the Licensing Officer carried out a telephone interview with Mr Davey to discuss his application. During the interview Mr Davey explained that he had driven for a living for around 10 years. He now had children and wanted

to become a licensed driver to supplement his income. In the longer term he wanted to work full time as a driver and possibly set up his own company.

The Licensing Officer said that Mr Davey had also submitted a written statement. In this he had explained that two of his driving offences were for speeding and the others for using a mobile phone whilst driving. He felt he was a safer driver as a result of the ban and realised how irresponsible he had been.

The Chairman invited Mr Davey and Mr Cordall to speak. Mr Cordall said that he felt that the three years was an excessive period for a driver to not meet standards after they had been disqualified. He had been a private hire operator since 2001 and a driver since 1984. In his experience as a private hire driver it was challenging to keep an eye on the speed, your surroundings and passengers.

Mr Davey had been unfortunate to be caught and many drivers broke the law and were fortunate to avoid punishment. Mr Davey was aware that he had made mistakes and had learnt from them. He added that it had been two and a half years since Mr Davey had been disqualified. Finding high quality staff was challenging and Mr Davey deserved a second chance.

In response to a point by the Chairman, Mr Davey explained that in his previous job he had not been provided with a Bluetooth system and he often had to answer his phone whilst working. He was less responsible at the time and had learnt from his mistakes. He had three children who he wanted to help provide for and it would be nice to work for his family's firm. He added that he was not forced to retake the test for his driving licence and felt that he was a safer driver as a result of his ban.

The Committee left the room at 10.15am so they could consider their decision. The returned at 10.45am.

LIC30

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.

DECISION

Mr Davey's application dated 3rd July 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from Darren Cordell of Adtax, a concern that has been operating within the District of Uttlesford since July 2001.

Mr Davey has three children under the age of five and is currently working for a supplier of car parts. This is a low paid job and Mr Davey would like to supplement his earnings by becoming a licensed driver, with a view to reverting in due course to his previous role as a professional driver.

However, on 20th March 2014 Mr Davey was disqualified from driving under the “totting up” provisions involving two speeding offences and two offences of using a mobile phone while driving.

Because of this, Mr Davey does not meet Point 3 of the Council’s Licensing Standards, which state:-

“Where a driver has been disqualified from driving for any reason a licence will not normally be granted for three years after the disqualification has expired or twelve months after the date the driver’s licence is re-issued whichever is the later”

Under normal circumstances Mr Davey would not normally be eligible to apply for a licence until 20th September 2017.

Having heard from both Mr Davey and from Mr Cornell of Antax on his behalf, we appreciate that he feels that he has been punished enough. We also appreciate that he would receive support from an employer that is in fact a family firm. We also appreciate the pressures on him as the father of a young family. However, Mr Davey was disqualified under the totting up provisions, which means he offended on four occasions, not once. He also has a job.

We are not persuaded that this is a case in which we should depart from our policy regarding a three year waiting period for the grant of a Private Hire/Hackney Carriage licence following a period of disqualification from driving. Accordingly we must refuse this application for a joint Private Hire/Hackney Carriage licence under S51(1)(a) Local Government (Miscellaneous Provisions) Act 1976 as we are not persuaded that Mr Davey is a fit and proper person to hold such a licence.

Mr Davey has a right of appeal to a Magistrates Court against this decision and he will be receiving a letter explaining the procedure.

LIC31

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

The Chairman read out the procedures for determining drivers’ licences. He then invited the Licensing Officer to present her report.

The Licensing Officer explained that the driver had been licenced by the authority since 1999. In 2007 his licence had been suspended for one day as he failed to notify the Council of a Police Caution which he had received within seven days. In August 2011, his licence was suspended for three days as he had not notified the Council of an accident involving a licensed vehicle within 72 hours. In November 2011 his licence was suspended for five days as he failed to notify the Council of a Police Caution.

On 18 June 2013, the driver attended a Speed Awareness Course having received a Notice of Intended Prosecution for a speeding offence which he

notified the Council of. In January 2016, the driver notified the Council that he had received a Notice for a speeding offence. When completing his renewal for in March 2016 he stated that he had committed a speeding offence four months ago, but had not received any further correspondence so had hoped the tickets had been quashed.

On 26 July 2016, the driver notified the Council that after a long delay he had attended the Magistrates' Court where his licence had been endorsed with six points. He had also been fined £130. The driver was advised that as he had received six penalty points for a single offence he no longer met the Council's licensing standards.

The Licensing Officer explained that the driver attended an interview with her on 25 August. The driver brought a letter with him which explained the circumstances surrounding the offence. The driver explained that he had two passengers in the vehicle, it was late at night, the road conditions were good and the M25 was not busy. His car was on cruise control at about 72mph, when he approached a gantry with a 50mph zone. When he received the Notice he immediately pleaded guilty and informed the Council.

The driver had brought three character references with him to the interview, one from his operator and two from long standing customers. The driver explained that he had only received one speeding offence prior to this one for which he had attended a speed awareness course.

The Chairman invited the driver to speak. The driver explained that he had worked as a private hire driver for over 20 years and had always had a clean licence. These were the first points which had ever been endorsed on his licence. He enjoyed his job and wanted to continue working as a driver until he retired.

The driver, the Licensing Officer, the Enforcement Officer and the Principal Environmental Health Officer left the room at 11am so the Committee could consider its decision. They returned at 11.25am.

DECISION

The application before the Panel today is for the revocation of the driver's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause.

On 29th July 2016 the driver informed the Council that he had been convicted by the North Kent Magistrates of an offence of speeding taking place on the 10th November 2015. It is understood that there was some delay on the part of the Police in dealing with this matter and the driver informed the Council of the position in both January 2016 when he received the Notice of Intended Prosecution and in March when he applied for the renewal of his licences.

The circumstances of the offence were that he had been travelling at 72MPH along the M25 at night when he approached an overhead gantry signifying a

temporary limit of 50MPH, and though he slowed down he was nevertheless caught on camera. For this offence he received a fine of £130 and 6 points endorsed upon his driving licence.

On notification, the driver was advised that since his licence had been endorsed with six points in respect of a single offence he no longer met UDC's Licensing Standards for drivers. Appendix A, para 2 of the Council's Policy states that:-

"No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence"

We have read a letter from the driver's employer, and we have also read two character references from satisfied customers. We have also heard from the driver, and have taken careful note of everything he has said.

He has a twenty year history of driving and this is his only motoring conviction. The driver describes this incident as "a rare blip" and said he had been surprised by the camera and we accept this. We also note that he hopes to continue driving within Uttlesford until he is due to retire, possibly in six years' time, and that he does not believe he would be able to return to his former trade in the construction industry. He also has a family to support.

In the light of the driver's history within Uttlesford and the consequences to him of the loss of his licence, the Committee feels justified in making an exception to paragraph 2 of Appendix A of the Council's Standards for Drivers. The decision of the Committee is that this application for revocation will be dismissed, and the driver can continue to be licensed to drive in Uttlesford.

The Committee agreed to determine Item 5 next, followed by Item 6 and then Item 4.

LIC32

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

The Enforcement Officer informed the Committee that the driver's operator had sent an email explaining that the driver had intended to attend the meeting and had been given time off attend. However, his other employer needed him to as cover. The operator requested that the matter was deferred in order to allow the driver to attend.

DECISION

The Committee resolved to defer consideration of the item until the meeting on 19 September in order to allow the driver to attend.

LIC33

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

The Enforcement Officer presented his report. The driver had been licenced by the authority until his licence expired on 31 July 2016. On 16 December 2015, the Council received a complaint regarding private hire vehicle 69 as the vehicle was allegedly displaying its licence plate on the inside of the back window. This breached the conditions of the vehicle's licence. The operator agreed to bring the vehicle to the Council offices for inspection on 21 December 2015.

During the inspection, an enforcement officer noted that the driver was not wearing his private hire badge. He explained that he had left it in another vehicle. The driver then attended an Interview Under Caution. The driver explained that he had been asked by his manager to bring the vehicle in for inspection before he went home and just after he had finished his shift. He had left his badge in the other vehicle as he had finished working and thought that as he was not transporting passengers he did not need to wear it.

The Enforcement Officer informed the Committee that failure to wear a private hire driver's badge was an offence under section 54(2)(b) Local Government (Miscellaneous Provisions) Act 1976. The former Assistant Chief Executive – Legal had authorised a prosecution against the driver for the alleged offence. The driver had attended Chelmsford Magistrates Court on 7 July and pleaded not guilty. At court, the driver said that he had been told by his manager that the vehicle's licence had been revoked and therefore he did not need to wear his badge. The case was due to go to trial on 17 October 2016.

During the Interview Under Caution the driver stated that he was living in Great Dunmow. A check of Council Tax records revealed that he had moved to Bishops' Stortford in August 2015. He had not notified the Council of this change which meant that he had breached the conditions of his licence which stated that the Council had to be notified of any changes of address within seven days. Normally this would be dealt with by way of a suspension.

The Enforcement Officer explained that as the driver had a pending prosecution he fell below the Council's licensing standards and therefore appeared before the Committee so that Members could determine whether he remained a fit and proper person to hold a licence.

In response to a question by the Solicitor, the Enforcement Officer said that the driver had not currently submitted his renewal form.

DECISION

The Committee resolved to defer the item until a date to be arranged, which would be after the driver's court case on 17 October 2016.

LIC34

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

The Licensing Officer presented her report. She said that the applicant had applied for a licence on 15 August. Applicants were asked to list all convictions, both spent and unspent. The applicant revealed four offences; burglary in 1981

and three offences for shoplifting and theft in 1990. She also disclosed a motoring offence in 1998 for which she received three points on her licence and was fined £100.

The Council obtained an enhanced DBS check for each applicant as part of the licensing process. The applicant's check revealed four convictions; Burglary and Theft Dwelling on 16 December 1981 for which she received a conditional discharge; two offences of Theft-shoplifting on 7 March 1990 and 3 April 1990 for which she received a conditional discharge for both, and further offence of Theft-shoplifting on 19 June 1990 for which she was sentenced to seven days imprisonment wholly suspended for 12 months.

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

On 22 August the Licensing Officer had carried out a telephone interview with the applicant. The applicant explained that she was 16 at the time of the first conviction and was in with the wrong crowd. She had not entered the property during the burglary but was charged. Regarding the offences in 1990 the applicant explained that she had five children at the time and was pregnant. She was a single parent and on benefits so she was shoplifting for children's clothes.

At the interview the applicant said that suspended prison sentence made her realise that she was at risk of having her children taken away from her. She moved from Waterlooville to Gosport and when her youngest child was five went to college to train as a painter and decorator. She had no convictions since 1990. She had worked for a number of companies but following two shoulder operations had been advised to change her career.

The Enforcement Officer, the Licensing Officer and the Principal Environmental Health Officer left the room at 11.45am so the Committee could consider its decision. They returned at 12pm.

DECISION

The Committee resolved to defer the matter until a date to be agreed in order to give the applicant the opportunity to attend.

The meeting ended at 12.10pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 19 SEPTEMBER 2016**

Present: Councillor R Chambers (Chairman)
Councillors J Davey and J Parry

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden (Principal Environmental Health Officer), S Pugh (Interim Head of Legal Services), A Rees (Democratic and Electoral Services Officer), A Turner (Licensing Team Leader) and M Watts (Principal Environmental Health Officer)

Also present: Mr B Martin, Mrs Kam Yeoman, the applicant in relation to Item 3 and his manager.

LIC35 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC36 APPLICATION FOR A NEW PREMISES LICENCE – MIX, 18 LOWER STREET, STANSTED, CM24 8LP

The Chairman read out the procedures for determining applications for premises licences. He then invited the Licensing Team Leader to present her report.

She explained that Mix was situated in the middle of Stansted. The premises had never previously held a premises licence and had previously been a shop. The venue planned to operate as an upmarket champagne cocktail wine bar which served light bites to accompany drinks.

The licensable activities being sought were as follows:

Live music (indoors only)	Thursday to Sunday 8pm – Midnight
Recorded music (indoors only)	Monday to Sunday 12 noon – Midnight
Late night refreshment (indoors and outdoors)	Monday to Sunday 11am to Midnight
Supply of alcohol for consumption on the premises	Monday to Sunday 12 noon – Midnight
Opening hours of the premises	Monday to Sunday 12 noon – Midnight

The Licensing Team Leader said that notices had been served on all the statutory bodies and had attracted a representation regarding noise/nuisance from the Council's Environmental Health department.

The applicant had agreed to withdraw the live music element from her application and had agreed a noise management plan with Environmental Health to ensure that recorded music was at a background level to avoid causing a public nuisance. Five objections had originally been received to the application. Following these concessions, three of the objectors had withdrawn their objections.

Two objections remained from interested parties and had raised concerns regarding the licensing objective the prevention of public nuisance. The concerns raised were; that noisy patrons in the smoking area and music until midnight everyday was excessive; already suffered from weekends of noise and people leaving other bars and pubs; recorded music being played loudly at all levels would create a public nuisance.

The Licensing Team Leader informed the Committee that the licensing authority had to promote the four licensing objectives as defined in the Licensing Act 2003. These were; the prevention of crime and disorder; public safety; the prevention of public nuisance; the protection of children from harm.

The Committee could decide to grant the licence, modify the application by inserting conditions, reject the all of, or part of the application. Due regard had to be given to the Council's licensing policy as well as the Secretary of State's Guidance issued in accordance with the Act.

The Committee could only impose conditions which were appropriate and proportionate in order to promote the licensing objectives relative to the representations received. Additionally, the conditions could not replicate the effects of existing legislation.

The Chairman invited Mr Martin to speak on behalf of the applicant and outlined further amendments to the conditions which were as follows;

Supply of alcohol for consumption on the premises	Monday to Saturday 11am – Midnight
	Sunday and Bank Holidays 12pm – 11.30pm
Opening Hours	Monday to Saturday 11am – 12.30am
	Sunday and Bank Holidays 12pm – Midnight

He then added that provision of outside seating would cease at 9pm. This brought the application in line with the other premises licence his client held within Stansted which she had held for the previous 10 years.

In response to the Chairman, the Principal Environmental Health Officer said that he was satisfied with the amended conditions. Initially there had been concerns about the provision of outside seating but these had now been adequately addressed.

The Licensing Team Leader, The Principal Environmental Health Officers, Mrs Yeoman, Mr Martin left the room at 2.15pm so the Committee could consider its decision. They returned at 2.25pm.

LIC37

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.

DECISION

This application is dated 27th July 2016 and is made by Kam Yeoman for the grant of a premises licence at 18 Lower Street, Stansted. We have read the Licensing Team Leader's report and are mindful of the provision of both the Council's Licensing Policy and Guidance issued by the Secretary of State.

The application relates to a two storey premises in the centre of Stansted village. It was previously a retail shop and has never been licensed. It is intended that the venue will become an upmarket champagne/cocktail bar serving light bites to go with drinks, the target market is professional people and especially women, and it is intended that a strict "No Under 18s" rule is to apply.

As required by the 2003 Licensing Act, the application contains within it a draft operating schedule. We have read this with care and note that the licensable activities sought by Ms Yeoman were as follows: _

1. Live music, indoors only, from 8.00PM to midnight on Thursday through to Sunday. This element of the application has been withdrawn.
2. Recorded music, indoors only, from 12.00 noon to midnight Monday through to Sunday. Following discussions with the Council's Environmental health Department a noise management plan will be agreed to ensure that this will be at background level only.
3. Late night refreshment, both in and outdoors, Monday to Sunday, 11.00 to midnight
4. Supply of alcohol for consumption on the premises, Monday to Sunday, 12.00 noon to 12.00 midnight.
5. Opening hours, Monday to Sunday 12.00 noon to 12.00 midnight

At the meeting the terms of the licence sought were varied as follows:

- Sale of alcohol: Mondays to Saturday, 11.00 am to 12.00 midnight; Sundays and bank holidays, 12.00 noon to 11.30 pm.
- Opening hours: Monday to Saturday, 11.00 am to 12.30 am; Sundays and bank holidays, 12.00 noon to 12.00 midnight.
- Use of tables and chairs and consumption of alcohol outdoors to cease at 9.00 pm.

Notice of the application has been served on the statutory bodies, which have attracted a representation from Environmental Health. Discussions have led to the withdrawal of the application in respect of live music and the acceptance of the need for a plan to address the level of background music. This has resolved the concerns of 3/5 of the individual objectors who have withdrawn their objections.

This Committee is mindful of the four licensing objectives, namely :-

1. The prevention of crime and disorder
2. Public safety
3. The prevention of public nuisance
4. The protection of children from harm.

The outstanding objections are based upon concerns regarding public nuisance, and in particular noisy patrons in the smoking area, and the playing of loud music. There are already licensed premises in the area and residents are concerned regarding weekends of noise and sleep disturbance.

There are three alternatives available to the Committee:-

1. Grant the application
2. Modify the application by the insertion of conditions.
3. Reject the whole or part of the application.

It is understood that there remain some issues requiring clarification with the Council's Planning Department. It is not the function of this Committee to resolve these matters.

We therefore grant the application as amended at the meeting, with a condition that a noise management plan will be agreed with the Council.

LIC38

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS' LICENCE

The Chairman read out the procedures for determining drivers' licences. He then invited the Enforcement Officer to present his report.

The Enforcement Officer said that the driver had been licensed by the authority until 31 March 2016 when his licence expired. The driver completed his renewal form on 24 March. One of the questions asked "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 this by stating "no".

The Council carried out an online driver check as part of the renewal process. This revealed that the driver committed an SP30 offence on 21 June 2015, which he was convicted of on 9 February 2016. Making a false statement was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

The Enforcement Officer told the Committee that the driver attended the Council Offices for an Interview Under Caution on 13 April 2016. At the interview the driver said he was not aware he had points on his licence, or of the Court case. Therefore officers decided to abandon the interview.

The Enforcement Officer explained that he submitted a data request regarding the conviction to Essex Police. The Police responded and stated that there was no record on the Police National Computer relating to the drivers' driving offences.

Following this the Enforcement Officer made enquiries with Essex Magistrates Court who supplied a copy of the court result for the driver. This showed that he was convicted on 9 February 2016 in his absence.

Currently no decision had been made as to whether to take further action against the driver for the alleged offence of making a false statement to obtain a licence. However, concealment of the offence would be grounds for revocation so Members should consider this aspect.

The Enforcement Officer said that as the driver was convicted of a speeding offence less than 12 months ago his conviction was not spent under the Rehabilitation of Offenders Act 1974 and did not meet paragraph 7 of the Council's licensing standards. However, did meet paragraphs 1 and 2 as he did not have more than 9 points within the last three years, and had not received six or more points within the last three years for a single offence.

In response to a question by the applicant's manager, the Enforcement Officer said that he had not been informed as to why the penalty points did not appear on the Police National Computer.

Councillor Parry asked whether the costs which followed the applicant's conviction had been paid, who had paid them and when they had been paid. In reply, the applicant's manager explained that the costs had been paid by the company. This had been done as soon as the conviction had been brought to the company's attention.

The Chairman invited the applicant's manager to speak on behalf of the applicant. Firstly he provided a character reference for the applicant. He explained that the applicant was responsible for between 12-20 employees on any given day. The company was customer focussed and it was a requirement that all employees were trustworthy and honest.

The applicant's manager then outlined the requirements of the applicant's role. The applicant did not work full time as a driver for the company and only acted as a driver when necessary. For example, when there were a number of customers waiting. The applicant did not gain any material financial gain by holding the licence, beyond occasional overtime.

The applicant was genuinely unaware of the points on his licence and had therefore not lied whilst completing his renewal form. Once he and the company had been made aware of the points and fine they were paid.

The Enforcement Officer asked for details of the circumstances which surrounded the offence. The applicant's manager explained that the offence had taken place in a customer's car. The company had mislaid the car's key and as the customer had a spare set was driven home by the applicant. The customer had then been contacted by the Police over the speeding offence and said that the company had been responsible for the car at the time. The company's record indicated that the applicant had been driving the car at the day of the offence, however the applicant said that he had dropped off the car and was on the train at the time of the offence.

The applicant's manager explained that ordinarily the Police required photographic evidence in order to prove who was driving. Had the company and the applicant been aware of the court case they would have attended.

In response to a question by Councillor Parry, the applicant's manager said that the company gave the applicant's details to the Police as part of the initial investigation process.

The Enforcement Officer, the Principal Environmental Health Officer, the applicant and the applicant's manager left the room at 2.50pm so the Committee could consider its decision. They returned at 2.55pm.

DECISION

The applicant's application dated 24th March 2016 is for the renewal of his Private Hire/Hackney Carriage Driver's licence, expiring on 31st March 2016. He was first granted a licence on 20th April 2015. He remains employed by "I Love Meet and Greet" in a non-driving capacity.

The Council's standard renewal application form, completed by the applicant on 24th March 2016 contains the following 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 a prosecution pending against you?"

To which, the applicant replied, "No".

However, a routine online DVLA check dated 30th March revealed an SP 30 offence which is a speeding offence. The offence in question took place on 21st June 2011, the date of conviction was 9th February 2016, and further enquiries

of Essex Magistrates revealed that the conviction was in Grantham, that the case was proved in the applicant's absence, and he was ordered to pay a fine of £220, a victim surcharge of £22 and prosecution costs of £85. At all material times, including under interview by UDC Enforcement Officers, the applicant denied all knowledge of the offence.

It is an offence under S57(3) Local Government (Miscellaneous Provisions) Act 1976 for a person "knowingly or recklessly" to make a false statement or omit any material particular when applying for a licence. It carries a fine of up to £1000 upon conviction. A decision regarding prosecution has not been made but this Committee has been mindful of this matter in arriving at its decision.

The conviction was less than 12 months ago and accordingly the applicant cannot claim the benefit of the Rehabilitation of Offenders Act 1974 and therefore does not meet para 7 of UDC's Standards for Drivers, which states:-

"No other criminal convictions which are not deemed to be spent within the meaning of the Rehabilitation of Offenders Act 1974."

However, he has only three points on his licence and therefore does not fall within either para 1 of the Council's Standards, namely "No more than 9 points endorsed on a driver's licence within the last 3 years" or para 2, namely "No convictions or fixed penalty notices endorsed on a driver's licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence."

Having heard from the applicant and his representative, the Committee is satisfied that the applicant was not aware of the 21st June offence and subsequent conviction dated 9th February 2016 and therefore did not knowingly make a false statement in his 24th March renewal application. The decision of the Committee is therefore that the applicant's licence should be granted.

The Chairman said that the Democratic and Electoral Services Officer was leaving the Council in the next few weeks. On behalf of the Committee, he thanked him for his work during his time at the Council.

The meeting ended at 12.05pm.

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 24 OCTOBER 2016**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and J Parry.

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden
(Principal Environmental Health Officer – Head of Licensing), R
Dobson (Principal Democratic and Electoral Services Officer), J
Jones (Licensing Officer), E Smith (Solicitor) and M Watts
(Principal Environmental Health Officer).

LIC39 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

LIC40 **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.

LIC41 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE
DRIVERS LICENCE**

The Committee considered a report in relation to Item 5.

The Chairman welcomed the driver, introduced all members and officers and
then explained the process.

The Enforcement Officer presented a report on behalf of the Licensing Officer,
asking Members to consider an application for a private hire/hackney carriage
driver's licence. The applicant had in her application of 15 August 2016
disclosed four offences and a motoring offence, which were confirmed by the
Disclosure and Barring Service (DBS) certificate. The offences were Burglary
and Theft in relation to a Dwelling in 1981 and three offences of Theft in 1990.
For the last offence, the applicant was sentenced to 7 days imprisonment,
suspended for 12 months. The applicant therefore did not meet the Council's
licensing standards, as, although all of her convictions were spent in
accordance with the Rehabilitation of Offenders Act 1974, point 5 of the
Licensing Standards – Drivers stated that an application 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 report set out a summary of the interview conducted with the applicant on 22 August 2016, in which she explained she had had no convictions since 1990. The applicant had for many years worked as a decorator, but due to a shoulder condition now wished to do less decorating work and move to a different career. If her application were to be successful, she would be employed on school contracts in Hampshire for 24 x 7.

The Chairman invited the applicant to ask questions about the report. The applicant said she had no questions.

The Chairman invited the applicant to make a statement. The applicant said since the commission of the offences she had changed, and had not been in trouble for 27 years.

The Solicitor advised Members that the character references and the offer of employment should be taken into consideration.

The applicant said she would like to gain her driver's badge, and felt she would be a good asset to her employer.

In reply to a question about why she had applied to Uttlesford and not to Hampshire, the driver said the employer always applied to Uttlesford. Officers explained that this licensing authority was the one to which 24 x 7 applied for all its licenses, as this was where its head office was based.

In reply to a question about whether her shoulder condition would affect her driving, the applicant said it would not.

At 2.10pm the Committee retired to consider its decision. At 2.20pm the Committee invited back the applicant, who was now accompanied by her prospective employer's representative, Mr Henley. The Committee gave its decision as follows.

DECISION

The application dated 11th July 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, the applicant has an offer of employment from 24x7 Ltd, a national operator based at Stansted, working on school contracts for Hampshire County Council.

However, the applicant does not meet Point 5 of the Council's Licensing Standards, which state that a driver 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 applicant's Enhanced DBS Check revealed the following matters:-

1. 16th December 1981 – Burglary and Theft – Portsmouth Juvenile Court Conditional Discharge.

2. 7th March 1990 – Shop Theft – Portsmouth Magistrates – Conditional Discharge.
3. 3rd April 1990 – Theft – Havant Magistrates – Conditional Discharge
4. 19th June 1990 - Shop Theft – Havant Magistrates – 7 days imprisonment suspended for 12 months
5. She also disclosed a motoring offence in 1998 for which Portsmouth Magistrates imposed a fine of £100 and three points upon her licence.

Though she is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In support of her application, the applicant states that she was very young at the time of her first conviction and was in “with the wrong crowd”. She did not enter the property concerned and was charged as one of a group. Her subsequent convictions she attributes wholly to poverty; in 1990 she was the single mother of five young children, was expecting a sixth and was reliant on benefits. The thefts were purely to provide clothing for the children. The suspended sentence made her realise things had to change or she would lose her children and consequently she moved away from Waterlooville and when her youngest child started school she embarked upon a college course, training as a painter and decorator.

Unfortunately, her health has declined and following two operations she has been advised to seek a career change.

Unfortunately, these are serious matters and although they took place many years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

At a previous hearing on 8th September, the applicant was asked to produce a written offer of employment and evidence as to good character. This she has done and we have read the material provided most carefully. We have also listened to what she had to say, and accordingly we must grant this application for a joint Private Hire/Hackney Carriage licence. The applicant will receive the paperwork in due course.

LIC41

DETERMINATION OF AN APPLICATION FOR RENEWAL OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Committee considered a report in relation to Item 2.

The Chairman welcomed the driver, introduced all members and officers and then explained the process.

The Enforcement Officer presented a report, asking Members to consider an application for renewal of a private hire/hackney carriage driver's licence. The report summarised the circumstances of the application.

In his application to the authority of 17 August 2016, the driver had in reply to the question which asked “have you in the past 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?” by answering “no”. The online driver check obtained by officers as part of the licensing process indicated he had received a fixed penalty notice for a speeding offence on 27 September 2015, for which his licence had been endorsed with three penalty points. The driver had breached condition 18c of his driver conditions, as he had failed to notify the Council within seven days of receiving the fixed penalty notice. Members were reminded that making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976.

The report set out a summary of the interview under caution conducted with the driver at the council offices on 9 September 2016. The driver had explained that he had omitted to refer to the offence through “stupidity”, and said he was unaware of the condition of licence to report fixed penalty notices to the Council within seven days. The Driver had not worked since the expiry of his licence on 31 August 2016.

The Enforcement Officer said he had taken the view that the matter should not be dealt with under his delegated powers, and had therefore referred the application for renewal to the Committee.

The Chairman invited the Driver to ask questions about the report; the Driver said he had no questions.

Councillor Barker asked whether the driver check referred to in the report could be produced. The Enforcement Officer passed the original document to the Committee.

The Chairman invited the Driver to make a statement. The Driver said there was not much of a case to make, he agreed with the statement in the report that he had failed to notify the Council that he had received a fixed penalty notice. It had previously been the case that an employee of the operator had done all the paperwork for the drivers, and that since she had left some years ago, it was up to the drivers to deal with their own forms. He had not done it properly, and had filled in the form wrong. There was no excuse. However, he had not intended to do anything wrong, as he had known the facts would have been checked. He said this was not a serious offence, and he had not done it intentionally. He had committed no previous misdemeanours.

In reply to a question from Councillor Barker, the driver said he had been licensed for four years.

There being no further questions, at 2.35pm the Committee withdrew to determine the application for renewal. At 2.40pm the Committee recalled the Driver, and gave its decision as follows.

DECISION

The application before the Panel today is for the renewal of a Driver's joint private hire/hackney carriage licence. His previous licence expired on 31st August 2016 and he was employed on school contracts by ACME Transport Services. It is understood that he would be re-engaged by them were his application to be granted today. .

The Council's standard renewal application form, completed by the Driver on 17th August 2016 contains the following 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 a prosecution pending against you?"

To which, the Driver replied, "No".

However, a routine online DVLA check dated 22nd August 2016 revealed an SP 30 offence which is a speeding offence. The offence in question took place on 27th September 2015 for which the Driver accepted a fixed penalty notice. However, he failed to report this to the Council within 7 days as required by Condition 18c of the conditions upon his licence.

The Driver admitted in an interview under caution taking place on 9th September 2016 that he had been stupid to believe that the Council would not find out about the offence.

It is an offence under S57(3) Local Government (Miscellaneous Provisions) Act 1976 for a person "knowingly or recklessly" to make a false statement or omit any material particular when applying for a licence. It carries a fine of up to £1000 upon conviction. It was felt not to be in the public interest to prosecute, but the Driver did accept a formal caution administered on 16th September 2016.

The Driver does meet the Council's Licensing Standards for drivers but officers decided that rather than issue a licence under delegated powers they would refer the decision to this Committee.

We have heard from the Driver and note that he admits the offence but states that he did not do as he did intentionally.

In reaching our decision we are mindful of our powers to suspend the coming into force of a licence for a period of time, but we are also mindful that the Driver has not worked since the expiry of his previous licence on 31st August. Accordingly we grant him a new licence effective as of today and he will receive the paperwork in due course.

The Committee considered a report in relation to Item 3.

The Chairman welcomed the driver, and his interpreter, Reyhan Uludogan, and introduced all members and officers. He explained the process.

The Solicitor explained the interpreter could not speak on behalf of the applicant, and that her role was confined to interpreting for the driver the proceedings and any questions put by members.

The Enforcement Officer presented a report, giving the opportunity for each sentence to be interpreted for the benefit of the Driver. The report described the circumstances of the application for a grant of a joint private hire/hackney carriage driver's licence. The application was dated 3 August 2016. A DBS check was clean, but in addition to the DBS check, an online driver check dated 23 August 2016 showed the driver had received a fixed penalty notice for an offence of using an uninsured vehicle on 20 March 2013. The driver's licence was endorsed with six penalty points.

Members were advised that fixed penalty notices for this offence ceased to be counted under the "totting up" provisions after three years, however they were not removed completely from a driver's record for four years after the date of the offence. Members were reminded making a false statement to obtain a licence to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976. An email from the Driver's interpreter had been received, on 23 August 2016, which stated the driver had not been aware of the six points until the information obtained from the online driver check.

Members were informed that when a person was driving on a non-GB driving licence, and they committed an offence, then the DVLA created a new record for them, to which points were transferred if the person subsequently obtained a GB licence.

The Enforcement Officer explained during the Interview Under Caution on 9 September 2016, the standard police caution was read to the driver, and in accordance with usual practice, the driver was asked to explain his understanding of the caution. It had become apparent his English language skills were not up to a standard that would enable officers to continue the interview, therefore the interview was abandoned. The friend whom the driver had brought with him was a potential third party, so not able to act as his interpreter.

Members explained that under licensing standard 13, drivers were required to have a reasonable command of the English language sufficient to enable the driver to perform the functions of a hackney carriage/private hire driver. The fact the driver had been unable to be interviewed in English was a concern for the officers as it had indicated he might be incapable of doing the job.

The Chairman invited the driver to ask questions about the report. The driver said he had no questions.

The Chairman then invited the driver to make a statement. Via his interpreter, the driver said he had not known he had six points. His car had been insured but it was the wrong insurance, the police had told him it was not business insurance.

The Driver produced the insurance certificate which was in force at the time of the offence, which showed there was no relevant business cover on the insurance.

The interpreter explained the insurance included appropriate cover in relation to the driver's cleaning business, but not for other types of business.

The Driver's interpreter made a statement. He said he was a good person. The failure to report the penalty points was only due to his lack of knowledge of the law, and his standard of English. He had now started college to improve his English to be able to become a taxi driver. He had made one big mistake.

The Solicitor reminded the interpreter that she could not make submissions on behalf of the driver. The interpreter said the statement reflected what the Driver had instructed her to say.

The Enforcement Officer asked whether the driver had received any training in relation to taxi work from his prospective employer about what he would be expected to do.

The driver said he had received training.

The Enforcement Officer asked whether the driver had been given any training on scenarios such as how to deal with a drunk customer.

The driver gave an account of an experience he had had of dealing with a difficult customer.

The Chairman said he did not dispute the applicant's skills as a driver, but it was very difficult for English people to understand what he was saying.

The driver said he understood everything and that people understood him very well. He was going to start college and learn more to help him become a taxi driver.

The Chairman asked whether the applicant had been granted a licence as a driver by any other authorities. The applicant said he had not, because he had been told to apply to Uttlesford.

The Enforcement Officer said the prospective employer, West End Cars, was also licensed in Chelmsford which had different standards, including a test for knowledge of language.

The Committee withdrew at 3.15pm to determine the application. At 3.30pm the Committee gave its decision, as follows.

DECISION

The applicant's application before the Panel today is for the grant of a joint private hire/hackney carriage licence. If successful, it is understood that he has an offer of employment from West End Cars. However, their operator's licence was revoked by this Committee on 23rd May 2016 and their appeal is listed for hearing at Basildon on 21st December. In the meantime they continue to trade.

The Council's standard application process includes the undertaking of both an enhanced DBS check upon applicants and an online DVLA check. Dated 23rd August 2016, it revealed an IN10 offence which involves the use of an uninsured vehicle on 20th March 2013, for which the applicant received six penalty points. Though these points are no longer eligible for inclusion under the totting up provisions, they will not be removed from the applicant's licence until March 2017. .

The applicant attended for interview under caution on 9th September 2016. He was accompanied by a friend to interpret but since the applicant did not understand the caution the interview had to be abandoned. All prior correspondence with the Council had been handled by Reyhan Uludogan (who assists him today) who had explained that at the time of the offence the applicant was driving on a non GB licence and did not appreciate that points will be transferred over to a GB licence once granted. All the applicant understood was that he had to pay a fine.

It is an offence under S57(3) Local Government (Miscellaneous Provisions) Act 1976 for a person "knowingly or recklessly" to make a false statement or omit any material particular when applying for a licence. It carries a fine of up to £1000 upon conviction. No decision as to prosecution has as yet been made, but this Committee is mindful that this is a serious matter we have to take into consideration. We are further mindful that Licensing Standard 13 requires

"..a reasonable standard of the English language sufficient to enable the driver to perform the functions of a hackney carriage/private hire driver"

The fact that the applicant does not have sufficient comprehension of English to understand the proceedings on 9th September, coupled with the fact that he or those advising him should have known a DVLA check would be made gives us some concern. Indeed, we note he was assisted by Ms Uludogan before us today.

We have listened very carefully to what has been said to us, and we have been shown a policy of insurance in force at the time, which did not cover the journey the being made at the time of the offence: but we have no alternative but to find the applicant is not a fit and proper person under S51 (1) (a) of the Local Government (Miscellaneous Provisions) Act 1976 to hold these licences by virtue of the fact he a) failed to disclose relevant information and b) does not meet Licensing Standard 13 with regard to his command of the English language at present. If, having taken a course in the English language he re-applies then the Committee would listen to that application though this should not be for at least six months.

The applicant has a right of appeal against this decision to the Magistrates Court and he will be receiving a letter explaining what he has to do.

LIC41

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Committee considered a report in relation to Item 6.

The Chairman welcomed the driver and introduced all members and officers. He explained the process.

The Licensing Officer presented a report regarding an application for a private hire/hackney carriage driver's licence.

The report set out the circumstances of the application, made in July 2016. The applicant had disclosed that he had had his licence endorsed for a fixed penalty notice within the last four years, and that he had "several convictions from criminal damage in 1981 to driving whilst disqualified 1998 (?) including burglary (12 months imprisonment) and motoring offences". The DBS certificate dated 19 September 2016 showed 14 convictions over a period starting in January 1980 when the applicant was 13 years old, to January 1998. Two of the convictions for burglary and theft in 1984 and 1987 resulted in custodial sentences in young offenders institutions and a conviction in May 1997 for burglary with intent to steal (non dwelling) led to a custodial sentence of 9 months. The applicant did not meet the Council's licensing standards, as although his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, 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 Check had shown an offence of failure to give information as to the identity of a driver on 6 August 2013, for which the Driver's licence was endorsed with 6 points in respect of this offence. The Driver did not meet the standards.

The report summarised the interview conducted with the Licensing Officer on 4 October 2016, explaining the context of the applicant's convictions in his earlier years, and how the applicant had subsequently made a change to his life and had gone on to hold responsible positions working on both Network Rail and airside at International airports. Regarding the motoring offence, he had received the notice of the penalty in the post, but had omitted to fill in his driving licence number, which had resulted in a six point penalty being imposed.

The Chairman asked whether the applicant had any questions about the report. The applicant said he had no questions.

The applicant then made a statement. He said his criminal record spoke for itself. He was not the same person as he had been in those days, he had

responsibilities now, with children and grandchildren. The motoring points he had incurred had been due to an oversight, as he had filled in everything else on the form but not the driving licence number.

At 4.15pm the committee withdrew to consider the application. At 4.20pm the committee gave its decision as follows.

DECISION

The applicant's application dated July 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from ECABS of Great Dunmow, working shifts. The applicant was made redundant in August 2015 and has to date failed to find other work.

However, an enhanced DBS check revealed that the applicant does not meet Point 5 of the Council's Licensing Standards, which state that a driver 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 applicant's Enhanced DBS Check revealed the following matters:-

1. 21 January 1980 – Criminal Damage – Dunmow Juvenile Court – Supervision Order
2. 13 September 1982 – Criminal Damage/Arson – Dunmow Juvenile Court – 3 months Detention Centre
3. 5th December 1983 – Public Order offence - Saffron Walden Juvenile Court – Fine
4. 25th April 1984 – Non-dwelling burglary – Dunmow Magistrates – Community Service and compensation
5. 12th September 1984 – Breach of CSO/non-dwelling burglary – Dunmow Magistrates – CSO revoked, 3 months x 2 Detention Centre to run concurrently.
6. 1st October 1986 – Theft/ Forgery and Counterfeiting x 4 – Dunmow Magistrates – 2 years probation x 5 to run concurrently.
7. 18th March 1987 – Attempted dwellinghouse burglary/non dwelling burglary x 2/ breach of probation order/driving whilst disqualified/with no insurance – Dunmow magistrates – 6 months Youth Custody/ 4 months Youth Custody x 4 to run concurrently.
8. 9th November 1990 – Driving whilst disqualified and without insurance/2 TiCs – Saffron Walden Magistrates – 100 hours Community Service/ 12 months disqualification from driving.
9. 12th February 1992 – GBH/common assault – Dunmow Magistrates – 120 hours Community Service.
10. 4th June 1993 – Non dwelling burglary – Saffron Walden Magistrates – 12 months probation
11. 12th October 1994 – Handling stolen goods – Dunmow Magistrates – 180 hours Community Service.
12. 30th November 1994 – Driving whilst disqualified/ no insurance – Dunmow Magistrates – Probation 18 months

13. 13th May 1997 – Non dwelling burglary – Harrow Crown Court – 9 months imprisonment.
14. 20th January 1998 – Driving whilst disqualified/ no insurance/ no MoT – NW Essex Magistrates – 2 months imprisonment/12 months disqualification.

Though he is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In support of his application, the applicant states that as a result of the breakdown of his parents' marriage and his mother's work and caring commitments he was left very much to his own devices and as a result began to get into trouble. After serving a 9 month custodial sentence in 1997 he realised that he had to make a change and to his credit he did so, remaining constantly in responsible work until his redundancy in August 2015.

Unfortunately the routine online DVLA check dated revealed an MS90 offence for which he was convicted in February 2014. This arose because he failed to complete the paperwork arising from being caught on an average speed camera correctly as a result of which he was convicted for failing to disclose driver details, which carries with it six penalty points rather than the three which the original speeding offence would have carried.

Because of this, the applicant does not meet Point 3 of the Council's Licensing Standards, which state:-

"Where a driver has been disqualified from driving for any reason a licence will not normally be granted for three years after the disqualification has expired or twelve months after the date the driver's licence is re-issued whichever is the later"

Under normal circumstances the applicant would not normally be eligible to apply for a licence until February 2017.

Unfortunately in aggregate, these are serious matters and although the overwhelming majority of them took place many years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

We have listened to what the applicant has to say and we have read the material provided most carefully. We believe that he has turned his life around and accepts responsibility for his previous actions: we also accept that the six penalty points arose as a result of an administrative oversight. We also take into account the fact the applicant has been out of work for over 12 months. Accordingly we grant this application, and the applicant will receive the paperwork in due course.

DRIVERS LICENCE

The Committee considered a report in relation to Item 7.

The Chairman welcomed the applicant and introduced all members and officers. He explained the process.

The Licensing Officer presented a report regarding an application for a private hire/hackney carriage driver's licence.

The applicant had applied on 23 September 2016 for the grant of a private hire/hackney carriage driver's licence. The application form included a question asking applicants whether they had ever been disqualified from driving or had had their licence revoked. The applicant had answered "yes" to that question and had disclosed that he had received a 90 day ban for an offence committed on 11 October 2013 due to the totting up system. He had also disclosed a previous offence of having tyres below the legal limit, for which his licence had been endorsed with 6 points. The applicant had stated that his licence was now clear.

However the Driver Check had revealed a TT99 conviction on 28 October 2014, indicating that penalty points had reached 12 or more within 3 years, at which point the driver was liable to be disqualified.

The applicant therefore did not meet the Council's licensing standards, as point 3 of the standards stated "where a driver has been disqualified from driving for any reason a licence will not normally be granted for 3 years after the disqualification has expired or 12 months after the date the driver's licence is re-issued whichever is the later". On that basis the applicant would not normally be eligible to apply for a licence until the end of January 2018.

The report summarised the telephone interview conducted with the applicant on 28 September 2016. The applicant had explained the second 6 point endorsement had been received as a result of using his brother's car. The applicant was insured to driver another vehicle with the owner's consent, under his own insurance policy. However the vehicle was identified whilst the applicant was driving it as having no MOT which meant the insurance was invalid. The applicant maintained he did not know the vehicle did not have a current MOT certificate.

The applicant stated he had not realised he did not meet the standards as his DVLA licence no longer showed any points. He had already spent money on having a vehicle compliance test and having a meter and roof light fitted.

The Chairman asked the applicant whether he had any questions. The applicant said he had not.

In response to the Chairman's invitation to make a statement, the applicant said all he wished to say was set out in his email which was given in the papers before the Committee.

Councillor Barker asked whether the applicant had driven for Ilford.

The applicant said he had, and that he had a Transport for London licence.

The Committee withdrew at 4.40pm to determine the application. At 4.55pm the Committee called back the applicant to ask him for clarification of a point.

Councillor Barker asked when the applicant had obtained his TFL licence. The applicant said he had obtained the licence in January and that it expired in 2018. Councillor Barker asked whether the applicant had purchased a vehicle for the purpose of being a driver.

The applicant said he had bought the vehicle in January, and was working using that car as a private hire/hackney carriage driver for TFL.

Councillor Barker asked where the car would be licensed. The applicant said it would be licensed in Uttlesford.

Officers asked the applicant to explain his stated aspiration to stop working in London and to return to Stansted, where he had worked before.

The applicant said he preferred Stansted. He had left the area for family issues. He was not enjoying the work as he felt intimidated in that area.

The Licensing Officer said he was not intending to dual licence. He said he had forgotten to mention, due to English being his second language, that when he read the conditions he misread the one year part which was why he had spent a lot of money to prepare the car, so if he didn't get the licence he would be in considerable financial difficulty.

At 5.05pm the Committee again withdrew. At 5.10pm the Committee gave its decision as follows.

DECISION

The applicant's application dated 23rd September 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he has an offer of employment from Mountfitchet Taxis. He has previously held a licence from UDC, but failed to renew in January 2013.

However, the Council's routine DVLA check revealed a TT99 conviction on 28th October 2014, namely that the Driver was disqualified from driving under the "totting up" provisions involving the driving of a vehicle without a valid MoT certificate, thus rendering the insurance cover invalid. This carries with it a penalty of 6-8 penalty points, so as the applicant already had six points upon his licence he was disqualified from driving for a period of 90 days.

Because of this, the applicant does not meet Point 3 of the Council's Licensing Standards, which state:-

"Where a driver has been disqualified from driving for any reason a licence will not normally be granted for three years after the disqualification has expired or twelve months after the date the driver's licence is re-issued whichever is the later"

Under normal circumstances the applicant would not normally be eligible to apply for a licence until the end of January 2018

Having heard from the applicant and having read the email from him contained in our papers most carefully, we are not persuaded that this is a case in which we should depart from our policy regarding a three year waiting period for the grant of a Private Hire/Hackney Carriage licence following a period of disqualification from driving. Accordingly we must refuse this application for a joint Private Hire/Hackney Carriage licence under S51(1)(a) Local Government (Miscellaneous Provisions) Act 1976 as we are not persuaded that the applicant is a fit and proper person to hold such a licence.

The applicant has a right of appeal to a Magistrates Court against this decision and he will be receiving a letter explaining the procedure.

LIC41

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Committee considered a report in respect of Item 4.

The report set out a request for the Committee to determine whether the driver should have his private hire/hackney carriage driver's licence suspended or revoked.

The report set out the circumstances under which suspension or revocation were to be considered, in that the driver's employer had notified the Council that the driver had informed them he had received a caution on 26 September 2016 for offences under the Harrassment Act 1997, and that he had advised his employer he was regularly drinking alcohol heavily.

The Driver had attended for an interview with officers on 3 October 2016, and had explained the context of the caution and the reliance on alcohol. He said he never went to work drunk. On 4 October 2016 an email had been received from the Domestic Abuse Investigation and Safeguarding Unit at Hertfordshire Police, explaining that the Driver had admitted to being alcohol dependent, and that he sometimes drank in the morning. It had been explained to the Driver that this admission would need to be reported to his employer, as there was a risk of his putting himself and other road users at risk.

Members were advised the Driver now fell below the licensing standards for drivers. Members were asked to determine whether the Driver continued to be a fit and proper person to be a licensed driver.

The Enforcement Officer provided an update as the Driver was not present, although had been informed of the date and time of the hearing. The Enforcement Officer said he had this afternoon telephoned both the Driver and the employer. The Employer explained the Driver had not turned up to work, as they had recently tried to offer him other work to support him, by letting him clear the cars. The Employer had also stated the Driver had been drunk in the mornings.

The Enforcement Officer had managed to speak to the Driver, who said he had not known the hearing was today.

The Chairman said he would consider giving the Driver one last chance. The Enforcement Officer said he had a concern about public safety. The Head of Licensing explained in response to a question from Councillor Parry, that it was not possible to revoke a licence if it was suspended for a period, so the option would be to suspend indefinitely and revoke at review. There was no evidence the Driver was currently driving.

The Solicitor said regarding public safety, the employer had taken steps to prevent him from driving, but the driver still had an ordinary driving licence, about which the Committee could do nothing.

RESOLVED to adjourn the consideration of the suspension or revocation.

The meeting ended at 5.25pm.

Committee: Licensing and Environmental Health

Agenda Item

Date: 25 January 2017

3

Title: REVIEW OF GAMBLING ACT POLICY

Author: Amanda Turner, Licensing Team Leader.
Tel: 01799 510613

Item for decision

Summary

- 1 The council's Licensing Policy under the Gambling Act 2005 was last adopted by full Council on 8 April 2014 and is now due for review. This report is to seek members' views as to whether any alterations are required to the policy prior to the Policy going out for consultation.

Recommendations

- 2 That the committee approves the draft statement of principles under the Gambling Act 2005 annexed to this report as the basis for consultation.

Financial Implications

3. None arising from this report.

Background Papers

- 4 The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

The following papers were referred to by the author in the preparation of this report.

Guidance to Licensing Authorities (5th edition) published by the Gambling Commission September 2015 available at

<http://www.gamblingcommission.gov.uk/Licensing-authorities/Information-for-licensing-authorities/Guidance-to-licensing-authorities.aspx>

Policy's from Braintree, Southend and Thurrock were also used to ensure Essex wide compliance as these have all recently been adopted by Committee.

Impact

5

Communication/Consultation	Prior to adopting any revision of the Licensing Policy the authority is obliged to consult the Police, one or more persons who represent the interest of persons carrying on gambling businesses in the authority's area and one or more persons who appear to the authority to represent
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	the interest of persons who are likely to be affected by the exercise of the authority's functions under the Gambling Act 2005.
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

- 6 The Gambling Act 2005 regulates the gambling industry by a licensing regime that establishes 3 types of licence namely an operating licence, a personal licence and a premises licence. In addition there are provisions for premises to be used on a temporary basis for gambling purposes and also permissions for certain gaming machines.
- 7 The draft proposed statement of principles annexed to this report is substantially similar to the Council's current statement of principles, apart from some minor updating highlighted on the attached draft.
- 8 Operators' licences and personal licences are issued by the Gambling Commission which has overall responsibility for gambling in the UK. The functions of the district council are:
 - Granting premises licences
 - Considering temporary use notices
 - Granting permits for gaming and gaming machines in clubs
 - Regulating gaming and gaming machines in alcohol licensed premises
 - Granting permits for family entertainment centres for lower stake gaming machines.
 - Granting permits for prize gaming.
 - Considering occasional use notices for betting at tracks.
 - Registration of sport society lotteries
- 9 Gambling activity in Uttlesford is limited. At the date of preparing this report we have the following licences issued:
 - Betting premises licences - 6
 - Adult gaming centre premises licences - 3
 - Unlicensed family entertainment centre premises - 9
 - Club gaming machines permits - 10

- Licensed premises gaming machine permit – 1
 - Notification of intent to have gaming machines (automatic entitlement to up to 2 category C or D gaming machines on alcohol licensed premises) – 58
 - Small Society Lotteries - 106
- 10 In exercising its functions, the council must have regard to the licensing objectives under the 2005 Act which are:
- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.
 - Ensuring that gambling is conducted in a fair and open way.
 - Protecting children and other vulnerable persons from being harmed or exploited from gambling.
- 11 In addition, the Act requires the authority to exercise its functions under the Act so as to permit gambling.
- 12 The council is also required to have regard to guidance issued by the Gambling Commission. The current Licensing Policy is consistent with the most recent guidance issued by the Commission.
- 13 There have not been any issues of concern with respect to the application of the Councils current Policy statement since its implementation. Furthermore there have been no legal challenges to the Policy.
- 14 From 6th April 2016, it is a requirement of the Gambling Commission's Licence Conditions and Codes of Practice (LCCP), under section 10, that licensees assess the local risks to the licensing objectives posed by the provision of gambling facilities at their premises and have policies, procedures and control measures to mitigate those risks.
- 15 Although there is no Statutory requirement on the Licensing Authority It is considered appropriate that a local area risk assessment profile should be completed for Uttlesford in the future. This is quite a lengthy document and some thought needs to be given to the most appropriate information and how compiled. The initial view is that it should include considerations such as the proximity of gambling premises to schools and vulnerable adult centres, or to residential areas where there may be a high concentration of families with children. It is anticipated that further specific recommendations will arise out of consultation, and these will be considered during the compilation of the local area profile. Once compiled this document will be referred to the Licensing Committee for consideration.
16. Apart from the Police it is suggested that letters be sent to all premises licence holders, all town and parish councils and that notice of the consultation be published on our website. A press release would also be issued inviting responses. In view of the fact that no main changes are proposed to the current policy which was subject to wider consultation and that the policy is consistent with the Gambling Commission's guidance, wider consultation is not considered necessary on this occasion.

17. The Gambling Commission is permitting a reduced consultation period as there are only minor changes. A 6 week consultation will comply with that recommendation. The next meeting of the Licensing Committee after the consultation is 12 April 2017. Thereafter this committee would recommend a policy for adoption to the next meeting of Full Council in May 2017.

Risk Analysis

17.

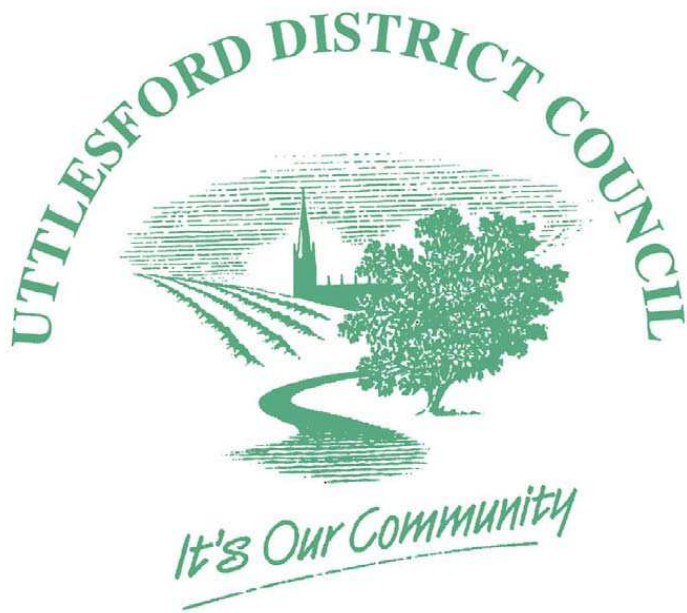
Risk	Likelihood	Impact	Mitigating actions
The Council is under an obligation to review the Gambling Act Policy every 3 years and ensure that the processes are followed in accordance with the legislation and guidance. Failure to achieve the timescale or demonstrate that appropriate consideration has been given to responses received during the consultation process could result in Judicial review.	1	2.	The failure of the Council to give appropriate consultation responses could result in the imposition of sanctions upon the council.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.



STATEMENT OF PRINCIPLES GAMBLING ACT 2005

If you require this information in any other format or language please contact the Licensing Department on 01799 510578 or at licensing@uttlesford.gov.uk

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DRAFT

PART A

1. INTRODUCTION

1.1 This Licensing Authority Statement of Principles sets out the principles the Uttlesford District Council, as the Licensing Authority under the Gambling Act 2005 (referred to in this document as 'the Act'), proposes to apply in discharging its functions to license premises for gambling under the Act as well as:-

- designating the body responsible for advising the Authority on the protection of children from harm;
- determining whether or not a person is an "Interested Party";
- exchanging information with the Gambling Commission and others; and
- inspecting premises and instituting court proceedings for offences committed under the Act.

2. THE LICENSING OBJECTIVES

2.1 In exercising most of its functions under the Act, Licensing Authorities must have regard to the Licensing Objectives as set out in Section 1 of the Act. The Licensing Objectives are:-

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

3. DESCRIPTION OF THE DISTRICT

3.1 Uttlesford District Council is situated in the County of Essex, which comprises twelve District and Borough Councils and two Unitary Authorities. Uttlesford is a rural area in North West Essex and is geographically the second largest district in the County. It has a population of approx. 83,500 (2014) and over half of these live in one of the four main centres of population, Great Dunmow, Saffron Walden, Stansted and Thaxted. The remainder live in the numerous villages and hamlets which make up the District. In the south of the District is Britain's fourth largest airport, Stansted. A survey published in December 2014 stated that Uttlesford offered the 23rd best quality of life in England and Wales. Its pleasant rural setting attracts many visitors from day trippers to those staying for longer periods many of whom will make use of licensed facilities within the district.

4. RESPONSIBILITIES UNDER THE ACT

- 4.1 The Act contains a licensing regime for commercial gambling, to be conducted by the Gambling Commission and by Licensing Authorities, depending on the matter to be licensed.
- 4.2 The Act establishes each District or Borough Council as the Licensing Authority whose responsibilities must be discharged by the Licensing Committee created under Section 6 of the Licensing Act 2003. Uttlesford District Council is the Licensing Authority for the Uttlesford District.
- 4.3 The Gambling Commission is responsible for issuing Operating and Personal licences to persons and organisations who:-
- operate a casino;
 - provide facilities for playing bingo or for pool betting;
 - general betting operating licence
 - act as intermediaries for betting;
 - make gaming machines available for use in Adult Gaming Centres and Family Entertainment Centres;
 - manufacture, supply, install, adapt, maintain or repair gaming machines;
 - manufacture, supply, install or adapt gambling machine software; or
 - promote a lottery.
- 4.4 The Licensing Authority is responsible for licensing premises in which gambling takes place. All types of gambling are covered, other than spread betting and the National Lottery. It is also responsible for issuing permits for premises with gaming machines and for receiving notices from operators wishing to use unlicensed premises for gambling on a temporary basis. It is also responsible for the registration of certain types of exempt Small Society Lotteries.
- 4.5 The Licensing Authority cannot become involved in the moral issues of gambling and must aim to permit the use of premises for gambling in so far as they think it is:-
- in accordance with any relevant codes of practice under section 24 of the Act;
 - in accordance with any relevant Guidance issued by the Gambling Commission under Section 25;
 - reasonably consistent with the Licensing Objectives (subject to the above matters), and
 - in accordance with the Licensing Authority's Statement of Principles (subject to the above matters).

Before the Licensing Authority can consider an application for a Premises Licence, an Operating and (if required) a Personal Licence must have been obtained from the Gambling Commission or applied for. Where an applicant for a Premises Licence has applied to the Gambling

Commission for a licence or licences the Premises Licence may not be granted until the Commission has granted the requisite licence(s).

5. STATEMENT OF PRINCIPLES

- 5.1 The Licensing Authority is required by the Act to publish a Statement of Principles which contains the principles it proposes to apply when exercising their functions under the Act.
- 5.2 In this document this is referred to as 'the Statement'. This Statement must be published every three years. The Statement must also be reviewed from 'time to time' and any proposed amendments and/or additions must be subject to fresh consultation. The 'new' Statement must then be published.
- 5.3 This Statement takes effect in 2017

6. CONSULTATION

- 6.1 In producing this Statement, the Licensing Authority consulted widely before finalising and publishing it. In addition to the statutory consultees (listed below), the Council chose to consult with additional local groups and individuals. A list of these other groups and persons consulted is also provided below.
- 6.2 The Act requires that the following parties are consulted by the Licensing Authority:-
 - The chief officer of police for the Authority's area;
 - One or more persons who appear to the Authority to represent the interests of persons carrying on gambling businesses in the Authority's area; and
 - One or more persons who appear to the Authority to represent the interests of persons who are likely to be affected by the exercise of the Authority's functions under the Act.
- 6.3 The other groups and people consulted were:-
 - Parish and town councils within the District;
 - Businesses who are, or will be, holders of Premises Licences;
 - Responsible Authorities under the Act.
 - The public
- 6.4 The Licensing Authority's consultation took place between February 2017 and April 2017
- 6.5 A full list of comments made and details of the Council's consideration of those comments is available by request to The Licensing Department, Council Offices, London Road, Saffron Walden, CB11 4ER

7. APPROVAL OF THE STATEMENT

- 7.1 This Statement was approved at a meeting of the full Council on *[To be inserted]* and was published via its website in *[To be inserted]*. Copies are available on request.
- 7.2 It should be noted that this Statement does not override the right of any person to make an application, to make representations about an application, or to apply for a review of a licence, as each case will be considered on its own merit and according to the requirements of the Act.

8. DECLARATION

- 8.1 In this Statement the Licensing Authority declares that it has had regard to the Licensing Objectives, formal Guidance issued to Licensing Authorities and any responses from those consulted during the consultation process.
- 8.2 Appendices have been attached to this Statement providing further information and guidance that is intended only to assist readers and should not be interpreted as legal advice or as constituent of the Council's Statement. Readers are strongly advised to seek their own legal advice if they are unsure of the requirements of the Gambling Act 2005, or the guidance or regulations should under the Act.
- 8.3 The Licensing Authority recognises its responsibilities under the Equality Act 2010. The impact of this Statement on race relations and disability equality will be monitored through the Uttlesford District Council's equality scheme.

9. RESPONSIBLE AUTHORITIES

- 9.1 A full list of the Responsible Authorities designated under the Act is given in the Definitions Section and their contact details are included. It should be noted that under the Act, the Licensing Authority is designated as a Responsible Authority.
- 9.2 The Licensing Authority is required to designate, in writing, a body that is competent to advise it about the protection of children from harm. In making this designation the following principles have been applied:-
- the competency of the body to advise the Licensing Authority;
 - the need for the body to be responsible for an area covering the whole of the Licensing Authority's area; and
 - the need for the body to be answerable to democratically elected persons rather than any particular invested interest group etc.
- 9.3 In accordance with the Gambling Commission's Guidance to Local Authorities, the Licensing Authority designates Essex County Council's Children's Safeguarding Children's Board for this purpose.

10. INTERESTED PARTIES

10.1 Interested Parties can make representations about licensing applications or apply for a review of an existing licence. An Interested Party is defined in the Act as follows:-

'... a person is an interested party in relation to a premises licence or in relation to an application for or in respect of a premises if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:-

- a) lives sufficiently close to the premises to be likely to be affected by the authorised activities,*
- b) has business interests that might be affected by the authorised activities,*
- or*
- c) represents persons who satisfy paragraphs (a) or (b).'*

10.2 Interested parties can be persons who are democratically elected such as councillors and MP's. No specific evidence of being asked to represent an interested person will be required as long as the councillor / MP represents the ward likely to be affected. Likewise, parish councils likely to be affected will be considered to be interested parties. Other than these, however the Licensing Authority will generally require some form of confirmation that a person is authorised to represent an interested party. District Councillors who are not members of the Licensing Committee will not qualify to act in this way.

Other than persons mentioned in 10.2 and 10.3 the Licensing Authority will generally require some form of confirmation that a person is authorised to represent an interested party.

10.3 The Licensing Authority considers that the Trade Associations, Trade Unions and Residents' and Tenants' Associations qualify as "Interested Parties" where they can demonstrate that they represent persons in (a) or (b) above.

10.4 In determining if a person lives sufficiently close to the premises that they are likely to be affected by the authorised activities, or has business interests that might be affected by authorised activities carried on from them the Licensing Authority will consider the following factors:-

- The size of the premises;
- The nature of the premises;
- The distance of the premises from the location of the person making the representation;
- The potential impact of the premises (e.g. number of customers, routes likely to be taken by those visiting the establishment);

- The circumstances of the person making the representation. This does not mean the personal characteristics of that person but his or her interest, which may be relevant to the distance from the premises;
- The catchment area of the premises (i.e. how far people travel to visit); and
- Whether the person making the representation has business interests in that catchment area that might be affected.

The Licensing Authority wishes to ensure that interested parties are aware of applications for licences and variations. Although Town and Parish Councils are not responsible authorities or interested parties in their own right when an application is made for a premises licence or a variation to such a licence in addition to the publicity given to the application by the applicant the Licensing Authority will notify the Town or Parish Council for the area within which the premises are situated. The Licensing Authority will also notify occupants of residential premises adjoining, opposite and to the rear of properties which are the subject of such applications.

11. EXCHANGE OF INFORMATION

11.1 In its exchange of information with parties listed in Schedule 6 of the Act, the Licensing Authority will have regard to:-

- the provisions of the Act, which include the provision that the Data Protection Act 1998 will not be contravened; the guidance issued by the Gambling Commission;
- Data Protection Act 1998;
- Human Rights Act 1998;
- Freedom of Information 2000;
- Environmental Information Regulations 2004;
- the Common Law Duty of Confidence;
- Electronic Communications Act 2000;
- Computer Misuse Act 1990;
- Criminal Procedure and Investigations Act 1996; and
- Crime and Disorder Act 1998.

11.2 Exchanges of information will be conducted in a timely and accurate fashion and confirmed in writing in all cases to form an audit trail. (Note: Written confirmation may include information in electronic form). An audit trail should include:-

- Record of data disclosed;
- Project chronology; and
- Notes of meetings with other partners and recent correspondence including phone calls.

12.2 PUBLIC REGISTER

The Licensing Authority is required to keep a public register and share information in it with the Gambling Commission and others. Regulations will

prescribe what information should be kept in the register. Copies of the register may be obtained on payment of a fee.

13. COMPLIANCE AND ENFORCEMENT

13.1 In exercising its functions with regard to the inspection of premises and to instituting criminal proceedings in respect of offences specified, the Licensing Authority follow best practice as promulgated by the Better Regulation Executive and the Hampton Review of regulatory inspections and enforcement and will endeavour to be:-

- Proportionate – Intervention will only be when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised.
- Accountable – Authorities must be able to justify decisions and be subject to public scrutiny.
- Consistent – Rules and standards must be joined up and implemented fairly.
- Transparent – Enforcement should be open and regulations kept simple and user friendly.
- Targeted – Enforcement should be focused on the problems and minimise side effects.

13.2 The Licensing Authority will endeavour to avoid duplication with other regulatory regimes, so far as is possible, and adopt a risk based inspection programme.

13.3 The main enforcement and compliance role of the Licensing Authority in terms of the Act will be to ensure compliance with the Premises Licence and other permissions which it authorises. The Gambling Commission will be the enforcement body for Operating and Personal Licences. Concerns about the manufacturer, supply or repair of gaming machines will not be dealt with by the Licensing Authority but will be notified to the Gambling Commission.

13.4 The Licensing Authority will keep itself informed of developments as regards the work of the Better Regulation Executive in its consideration of the regulatory functions of Local Authorities, and will have regard to best practice..

13.5 Bearing in mind the principle of transparency, the Licensing Authority's enforcement/compliance protocols, or written agreements, will be available on request to the Licensing Authority. Details of the risk based approach to inspection will also be available upon request. Details of this

information can also be found on the Council's website:
www.uttlesford.gov.uk

14. DELEGATION OF POWERS

The Council has agreed a scheme of delegation for discharging its functions under the Act.

PART B PREMISES LICENSES

15. GENERAL PRINCIPLES

15.1 Premises Licences will be subject to the permissions/restrictions set out in the Act as well as the specific mandatory and default conditions which will be detailed in regulations issued by the Secretary of State. Licensing Authorities are able to exclude default conditions and also attach others, where it is thought appropriate.

15.2 Licensing Authorities are required by the Act, in making decisions about Premises Licences, to permit the use of premises for gambling so far as it thinks fit:-

- in accordance with any relevant codes of practice issued by the Gambling Commission under section 24 of the Act
- in accordance with any relevant guidance issued by the Gambling Commission under section 25;
- to be reasonably consistent with the Licensing Objectives (subject to the above matters); and
- in accordance with the Authority's Statement (subject to the above matters).

15.3 Definition of Premises:

Premises is defined in the Act as "any place". It is for the Licensing Authority to decide whether different parts of a building can be properly regarded as being separate premises although this will always be considered in the light of guidance issued by the Gambling Commission. It will always be a question of fact in each circumstance. The Gambling Commission does not, however, consider that areas of a building that are artificially or temporarily separate can be properly regarded as different premises.

The Licensing Authority will pay particular attention to applications where access to the licensed premises is through other premises (which themselves may be licensed or unlicensed).

15.4 Demand:

Demand is a commercial consideration and is not an issue for the

Licensing Authority.

A. The Act is clear that demand issues (e.g. the likely demand or need for gambling facilities in an area) cannot be considered with regard to the location of premises but that considerations in terms of the licensing objectives can. The Licensing Authority will pay particular attention to the objectives of protection of children and vulnerable persons from being harmed or exploited by gambling, as well as issues of crime and disorder.

B. In order for location to be considered, the Licensing Authority will need to be satisfied that there is sufficient evidence that the particular location of the premises would be harmful to the licensing objectives. From 6th April 2016, it is a requirement of the Gambling Commission's Licence Conditions and Codes of Practice (LCCP), under section 10, that licensees assess the local risks to the licensing objectives posed by the provision of gambling facilities at their premises and have policies, procedures and control measures to mitigate those risks. In making risk assessments, licensees must take into account relevant matters identified in this policy.

C. The LCCP also states that licensees must review (and update as necessary) their local risk assessments:

- a) to take account of significant changes in local circumstance, including those identified in this policy;
- b) when there are significant changes at a licensee's premises that may affect their mitigation of local risks;
- c) when applying for a variation of a premises licence; and
- d) in any case, undertake a local risk assessment when applying for a new premises licence.

D The Licensing Authority expects the local risk assessment to consider as a minimum:

- whether the premises is in an area of deprivation
- whether the premises is in an area subject to high levels of crime and/or disorder
- the ethnic profile of residents in the area, and how game rules, self-exclusion leaflets etc. are communicated to those groups
- the demographics of the area in relation to vulnerable groups
- the location of services for children such as schools, playgrounds, toy shops, leisure centres and other areas where children will gather

E In every case the local risk assessment should show how vulnerable people, including people with gambling dependencies, are protected.

F Other matters that the assessment may include:

- The training of staff in brief intervention when customers show signs of excessive gambling, the ability of staff to offer brief intervention and how the manning of premises affects this.
- Details as to the location and coverage of working CCTV cameras, and how the system will be monitored.
- The layout of the premises so that staff have an unobstructed view of persons using the premises.
- The number of staff that will be available on the premises at any one time. If at any time that number is one, confirm the supervisory and monitoring arrangements when that person is absent from the licensed area or distracted from supervising the premises and observing those persons using the premises.

- Arrangements for monitoring and dealing with under age persons and vulnerable persons, which may include dedicated and trained personnel, leaflets, posters, selfexclusion schemes, window displays and advertisements not to entice passers-by etc.
- The provision of signage and documents relating to games rules, gambling care providers and other relevant information be provided in both English and the other prominent first language for that locality.
- Where the application is for a betting premises licence, other than in respect of a track, the location and extent of any part of the premises which will be used to provide betting machines.

G Such information may be used to inform the decision the council makes about whether to grant the licence, to grant the licence with special conditions or to refuse the application.

H This policy does not preclude any application being made and each application will be decided on its merits, with the onus being upon the applicant to show how the concerns can be overcome.

15.5 Location:

Location will only be material consideration in the context of the Licensing Objectives.

15.6 Duplication with other Regulatory Regimes:

Duplication with other statutory/regulatory regimes will be avoided where possible. This Authority will not consider whether a licence application is likely to be awarded Planning Permission or Building Control consent.

15.7 Licensing Objectives:

In considering whether applications are reasonably consistent with the Licensing Objectives, the Licensing Authority will take into account the following:

Preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime –

Whilst the Licensing Authority is aware that the Gambling Commission will be taking a leading role in preventing gambling from being a source of crime, it will pay attention to the proposed location of gambling premises in terms of this licensing objective.

Where an area has known high levels of organised crime, this Authority will consider carefully whether gambling premises are suitable to be located there and the need for conditions, such as the provision of door supervisors.

The Licensing Authority is aware that there is a distinction between disorder and nuisance and that the prevention of nuisance is not a Licensing Objective under the Act.

Ensuring that gambling is conducted in a fair and open way –

The Gambling Commission does not generally expect Licensing Authorities to be concerned with ensuring that gambling is conducted in a fair and open way. The Licensing Authority notes that in relation to the licensing of tracks, its role will be different from other premises in that track operators will not necessarily have an Operating Licence. In those circumstances, the Premises Licence may need to contain conditions to ensure that the environment in which betting takes place is suitable.

Protecting children and other vulnerable persons from being harmed or exploited by gambling –

In practice, the Objective of protecting children from being harmed or exploited by gambling often means preventing them from taking part in, or being in close proximity to, gambling.

The Council will pay attention to the proposed location of gambling premises in terms of the proximity of gambling premises to schools and vulnerable adult centres, or residential areas where there may be a high concentration of families with children.

There is no definition of the term 'vulnerable person' in the Act, but this could include people who are gambling beyond their means and people who may not be able to make informed or balanced decisions about gambling due to a mental impairment, alcohol or drugs.

15.8 Conditions:

The Authority is aware that the mandatory and default conditions imposed by the Act will normally be sufficient to regulate gambling premises. In exceptional cases where there are specific risks or problems associated with a particular locality, specific premise or class of premises the authority may consider attaching individual conditions related to the licensing objectives. Any conditions attached to Licences will be proportionate and will be:-

- relevant to the need to make the proposed premises suitable as a gambling facility;
- directly related to the premises and the type of licence applied for;
- fairly and reasonably related to the scale and type of premises; and
- reasonable in all other respects.

In addition, the Licensing Authority will examine how applicants propose to address the licensing objectives. In considering applications the Licensing Authority will particularly take into account the following, if deemed appropriate:

- Proof of age schemes

- CCTV
- Door Supervisors
- Supervision of entrances/machine areas;
- Physical separation of areas;
- Location of entry;
- Notices and signage;
- Specific opening hours; and
- With particular regard to vulnerable persons, measures such as the use of self-barring schemes, provision of information, leaflets, helpline numbers for organisations such as GamCare.

15.9 Decisions upon individual conditions will be made on a case by case basis. Consideration will be given to using control measures, should there be a perceived need, such as the use of door supervisors, supervision of adult gaming machines, appropriate signage for adult only areas, etc. Applicants will also be expected to offer their own suggestions as to the way in which the Licensing Objectives can be effectively met.

15.10 It is noted that there are conditions which the Licensing Authority cannot attach to Premises Licences. These are:-

- any conditions on the Premises Licence which make it impossible to comply with an Operating Licence condition;
- conditions relating to gaming machine categories, numbers, or method of operation;
- conditions which provide that membership of a club or body be required (the Act specifically removes the membership requirement for casino and bingo clubs and this provision prevents it being reinstated);
- conditions in relation to stakes, fees, and the winning of prizes.

15.11 **Door Supervisors:**

The Licensing Authority may consider whether there is a need for door supervisors in terms of the Licensing Objectives of protecting of children and vulnerable persons from being harmed or exploited by gambling and also in terms of preventing premises becoming a source of crime. As the Act has amended the Security Industry Act 2001, door supervisors at casinos or bingo premises will not normally need to be licensed by the Security Industry Authority.

The Authority will make a door supervisory requirement only if there is clear evidence from the history of trading at the premises that the premises cannot be adequately supervised from the counter and that door supervision is both necessary and proportionate.

15.12 **Credit:**

Credit facilities are prohibited from being provided in casinos and bingo licensed premises. Cash machines (ATM's) may be installed in such premises but the licensing authority may apply conditions as to where they are sited.

15.13 **Betting Machines: (See Definitions)**

In relation to Casinos, Betting Premises and Tracks, the Licensing Authority can restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a Betting Premises Licence or to a Casino Premises Licence (where betting is permitted in the Casino).

15.14 When considering whether to impose a condition to restrict the number of betting machines in particular premises, the Licensing Authority, among other things, shall take into account:-

- the size of the premises;
- the number of counter positions available for person to person transactions; and
- the ability of staff to monitor the use of the machines by children and young persons or by vulnerable persons.

15.15 In deciding whether to impose conditions to limit the number of betting machines, each application will be considered on its own merit and account will be taken of codes of practice or guidance issued under the Act.

16. **PROVISIONAL STATEMENTS**

The Guidance states that a licence to use premises for gambling should only be issued in relation to premises that the licensing authority can be satisfied are going to be ready to be used for gambling in the reasonably near future, consistent with the scale of building or alterations required before the premises are brought into use.

If the construction of a premises is not yet complete, or if they need alteration, or if the applicant does not yet have a right to occupy them, or does not have an operators licence, then an application for a provisional statement should be made instead.

In deciding whether a premises licence can be granted where there are outstanding construction or alteration works at a premises, this authority will determine applications on their merits, and in accordance with the Gambling Commission guidance.

17. REPRESENTATIONS AND REVIEWS

17.1 Representations and Applications for Review of Premises Licence may be made by responsible authorities and interested parties.

17.2 The Licensing Authority can make a representation or apply for a review of the Premises Licence on the basis of any reason that it thinks is appropriate. For the purpose of exercising its discretion in these matters, the Authority has designated officers in accordance with the Scheme of Delegation as being the proper persons to act on its behalf.

17.3 The Licensing Authority will decide if a representation or application for a review is to be carried out on the basis of whether or not the request is:

- Frivolous or vexatious.
- Will certainly not cause the Authority to wish to /revoke/suspend the Licence or remove, amend or attach conditions to the Licence
- Substantially the same as previous representations or requests for a review.
- In accordance with any relevant codes of practice issued by the Gambling Commission.
- In accordance with any relevant guidance issued by the Gambling Commission.
- Reasonably consistent with the licensing objectives.

17.4 There is no appeal against the Authority's determination of the relevance of an application for review but such determination may be the subject of an application for judicial review.

18. ADULT GAMING CENTRES

18.1 An Adult Gaming Centre is defined in the Definitions. Entry to these premises is age restricted.

18.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

19. (LICENSED) FAMILY ENTERTAINMENT CENTRES

19.1 A Licensed Family Entertainment Centre is defined in Definitions. Entry to these premises is not generally age restricted although entry to certain

areas may be restricted, dependent on the category of machines available for use.

19.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

20. CASINOS

20.1 The Licensing Authority has made no decision on casinos but each application will be considered on its own merit. In making this decision the Licensing Authority consulted widely on this specific issue.

20.2 Casinos and Competitive Bidding:

The Licensing Authority is aware that where a Licensing Authority's area is enabled to grant a Premises Licence for a new style casino, there are likely to be a number of operators which will want to run a casino. In such situations the Council will run a competition in line with Regulations and Codes of Practice issued under the Act by the Secretary of State. It should be noted that at the time this Statement was adopted this Licensing Authority's area had not been so enabled.

20.3 Betting Machines:

The Licensing Authority can restrict the number of betting machines, their nature and the circumstances in which they are made available by attaching a licence condition to a Betting Premises Licence or to a Casino Premises Licence (*where betting is permitted in the casino*). When considering whether to impose a condition to restrict the number of betting machines in particular premises, the Licensing Authority, amongst other things should take into account:-

- the size of the premises;
- the number of counter positions available for person to person transactions; and
- the ability of staff to monitor the use of the machines by children and young persons or by vulnerable persons.

20.4 In deciding whether to impose conditions to limit the number of betting machines, each application will be on its own merits and account will be taken of Codes of Practice or Guidance issued under the Act.

20.5 Credit:

Credit facilities are prohibited in casinos; however, this does not prevent the installation of cash dispensers (ATMs) on the premises, although the Licensing Authority may attach conditions as to the siting of such machines.

21. BINGO PREMISES

21.1 A Bingo premises is defined in the Definitions. Entry to these premises is not generally age restricted although entry to certain areas may be restricted, dependent on the category of machines available for use.

21.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

21.3 Credit:

Credit facilities are prohibited in premises licensed for Bingo, however, this does not prevent the installation of cash dispensers (ATMs) on the premises, although the Licensing Authority may attach conditions as to the siting of such machines.

22. BETTING PREMISES

22.1 Betting Premises are defined in the Definitions.

22.2 The Licensing Authority will take account of any conditions applied to an Operating Licence in respect of such premises.

23. TRACKS

A Track is defined in the Definitions. Entry to parts of these premises is generally age restricted. On race days, specific areas within the Track may be age restricted dependent on the licensable activities taking place.

24. TRAVELLING FAIRS

The Licensing Authority will determine whether the statutory requirement that the facilities for gambling amount to no more than an ancillary amusement at a travelling fair is met, where Category D machines and/or equal chance prize gaming without a permit are to be made available for use.

25. PUBLICITY FOR APPLICATIONS

The Licensing Authority wishes to ensure that interested parties are aware of applications for licences and variations. When an application is made for a premises licence or a variation to such a licence in addition to the publicity given to the application by the applicant the Licensing Authority will notify the Town or Parish Council for the area within which the premises are situated. The Licensing Authority will also notify occupants of residential premises adjoining, opposite and to the rear of properties which are the subject of such applications.

PART C PERMITS/TEMPORARY OR OCCASIONAL USE NOTICES/REGISTRATIONS

26. GENERAL

Forms and Method of Application and any additional information or documents required for permits covered by this section can be obtained from the Licensing Authority.

27. UNLICENSED FAMILY ENTERTAINMENT CENTRE GAMING MACHINE PERMITS

27.1 Where a premises does not hold a Premises Licence but wishes to provide Gaming machines, it may apply to the Licensing Authority for a Permit. It should be noted that the applicant must show that the premises will be wholly or mainly used for making gaming machines available for use.

27.2 Statement of Licensing Principles

The Licensing Authority will expect the applicant to show that there are written policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The suitability of such policies and procedures will be considered on their merits, however where children and young persons are permitted, they may include:-

- A basic CRB or equivalent criminal record check for the applicant and the person having day to day control at the premises
- How the applicant proposed to ensure that children will be protected from harm whilst on the premises
- Training covering how staff would deal with:-
 - unsupervised, very young children being on the premises, or
 - children causing perceived problems on/around the premises.
 - Suspected truant children
 - Safeguarding awareness training

28. (ALCOHOL) LICENSED PREMISES GAMING MACHINE PERMITS

28.1 There is provision in the Act for premises licensed to sell alcohol for consumption on the premises to automatically have two gaming machines, of Categories C and/or D. The Premises Licence holder needs to notify the Licensing Authority at least two months prior to the date of expiry of the current permit.

28.2 Gaming machines can only be located on licensed premises that have a bar for serving customers.

28.3 Premises restricted to selling alcohol only with food, will not be able to apply for a Permit, unless they have a separate bar area

28.4 Where an application for more than two gaming machines is received, the Licensing Authority will specifically have regard to the need to protect children and vulnerable persons from harm, or being exploited by gambling and will expect the applicant to satisfy the Authority that there will be sufficient measures to ensure that under 18 year olds do not have access to the adult only machines. Measures will cover such issues as:-

- Adult machines being in sight of the bar;
- Adult machines being in sight of staff who will monitor that the machines are not being used by those under 18;
- Appropriate notices and signage; and
- As regards the protection of vulnerable persons, the Licensing Authority will consider measures such as the use of self-barring schemes, provision of information, and leaflets/help line numbers for organisations such as GamCare.

The Licensing Authority can decide to grant an application with a smaller number of machines and/or a different category of machines than that applied for but conditions other than these cannot be attached.

29. PRIZE GAMING PERMITS

29.1 Where premises do not hold a premises licence but wish to provide prize gaming, an application for a prize gaming permit may be made to the Licensing Authority. The applicant must specify the nature of the gaming for which the permit is sought. The applicant should be able to demonstrate that:

- They understand the limits to stakes and prizes that are set out in the Regulations; and
- That the gaming offered is within the law

29.2 Statement of Licensing Principles

The Licensing Authority will expect the applicant to show that there are written policies and procedures in place to protect children from harm. Harm in this context is not limited to harm from gambling but includes wider child protection considerations. The suitability of such policies and procedures will be considered on their merits, however, they may include:-

- A basic CRB or equivalent criminal record check for the applicant and the person having day to day control at the premises
- How the applicant proposed to ensure that children will be protected from harm whilst on the premises
- Training covering how staff would deal with:-

- unsupervised, very young children being on the premises, or
- children causing perceived problems on/around the premises.
- Suspected truant children
- Safeguarding awareness training

In making its decision on an application for a Permit, the Licensing Authority does not need to have regard to the Licensing Objectives but must have regard to any Gambling Commission guidance.

30. CLUB GAMING AND CLUB MACHINE PERMITS

30.1 Members' clubs and miners' welfare institutes may apply for a Club Gaming Permit and/or a Club Gaming Machine Permit, but are restricted by category and number of machines and to equal chance gaming and games of chance.

30.2 Commercial clubs may apply for a club machine permit, subject to restrictions.

30.3 The gambling provided under the authority of a club gaming permit must also meet the following conditions.

(a) in respect of gaming machines

No child or young person may use a category B or C machine on the premises. That the holder must comply with any relevant provision of a code of practice about the location and operation of gaming machines.

(b) the public, children, and young persons must be excluded from any area of the premises where the gaming is taking place.

30.4 Section 273 of the Act sets out the conditions that will apply to the club machine permit, including that in respect of gaming machines no child or young person uses a category B or C machine on the premises and that the holder complies with any relevant provision of a code of practice about the location and operation of gaming machines..

31. TEMPORARY USE NOTICES (TUN)

31.1 The persons designated to receive TUNs and to issue objections are specified in the Scheme of Delegation available from the Authority.

31.2 A TUN may only be granted to a person or company holding an operating licence relevant to the temporary use of the premises. Regulations will be issued by the Secretary of State prescribing the activities to be covered. Under current regulations a Temporary Use Notice can only be issued for equal chance gaming.

31.3 For the purpose of a TUN, a set of premises is the subject of a TUN if any part of the premises is the subject of the Notice. This prevents one large premises from having a TUN in effect for more than 21 days per year by giving a Notice in respect of different parts.

31.4 The definition of "a set of premises" will be a question of fact in the particular circumstances of each Notice that is given. In considering

whether a place falls within the definition of “a set of premises” the Licensing Authority will consider, amongst other things, the ownership/occupation and control of the premises.

31.5 The Licensing Authority will object to Notices where it appears that there effect would be to permit regular gambling in a place that could be described as one set of premises.

32. OCCASIONAL USE NOTICES

32.1 Occasional Use Notices, apply only to tracks, which are described as being premises on any part of which a race or other sporting events take place, or is intended to take place. Tracks need not be a permanent fixture.

32.2 OUN's are intended to permit licensed betting operators who have the appropriate permission of the Gambling Commission to use tracks for short periods for conducting betting. The OUN dispenses with the need for a Betting Premises Licence for the track.

32.3 The Licensing Authority has very little discretion as regards these Notices, aside from ensuring that a statutory limit of 8 days in a calendar year is not exceeded.

32.4 The Licensing Authority will, however, consider the definition of a track and whether the applicant is permitted to avail him/herself of the Notice.

32.5 The person designated to receive the OUN's and assess validity is specified in the scheme of delegation

33. SMALL SOCIETY LOTTERIES

The definition of a Small Society Lottery is contained in the Definitions and these require registration with the Licensing Authority.

ANNEXES

ANNEX 1 - DEFINITIONS

Adult Gaming Centres – premises for gaming machines; entitles them to make category B, C and D gaming machines available

Betting – making or accepting a bet on:-

- the outcome of a race, competition or other event
- likelihood of anything occurring or
- anything is or is not true

Betting Premises – Premises licensed to accept bets

Bingo – no statutory definition; have its ordinary and natural meaning. Can include cash bingo where the stakes paid are make up the cash prizes, or prize bingo, where form of prize is not directly related to the stakes paid

Family Entertainment Centre – premises which provides gaming machines in categories C and D.

Gambling – includes gaming, betting or lottery

Gaming Machines – machine designed or adapted for use by individuals to gamble (excludes betting machines or machines that enable the playing of bingo); Secretary of State by regulations can define four classes of gaming machine with regards to stake, value of prize, nature of prize and nature of gambling (A-D).

Interested Party - For the purposes of this Act, a person is an interested party in relation to a premises licence if, in the opinion of the Licensing Authority which issues the licence or to which the application is made, the person:-

- a) Lives sufficiently close to the premises to be likely to be affected by the authorised activities;
- b) Has business interests that might be affected by the authorised activities;
- c) Represents persons who satisfy a) or b) above

Prize Gaming – gaming where nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by gaming; the prize is determined by the operator before the play commences

Responsible Authority - For the purposes of this Act, the following are responsible authorities in relation to premises:

1. The Licensing Authority in whose area the premises are wholly or mainly situated (“Uttlesford District Council”)
2. The Gambling Commission;
3. Essex Police;
4. Essex Fire and Rescue Service;

5. Planning Services Manager, Uttlesford District Council;
6. Environmental Health Manager, Uttlesford District Council;
7. Local Safeguarding Children's Board for Essex;
8. HM Customs and Excise

Small Society Lotteries – lottery run by non-commercial societies (established and conducted for charitable purposes, for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or for any other non-commercial purpose other than private gain.)

Tracks – site where races or other sporting events take place; no special class of betting premises licences for tracks

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ANNEX 2 – RESPONSIBLE AUTHORITIES

LICENSING AUTHORITY: The Licensing Department, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex CB11 4ER

GAMBLING COMMISSION: Victoria Square House, Victoria Square, Birmingham B2 4BP

ESSEX POLICE : The Licensing Department (Alcohol), Essex Police, PO Box 12306, Police Station, Newland Street, Witham. CM8 2AS.

ESSEX FIRE AND RESCUE SERVICE : Uttlesford & Braintree Community Command, Essex Fire and Rescue Service, Fire Station, Railway Street, Braintree, Essex CM7 3JD

PLANNING SERVICES: The Planning Department, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex CB11 4ER

ENVIRONMENTAL HEALTH: Environmental Health Department, Uttlesford District Council, Council Offices, London Road, Saffron Walden, Essex CB11 4ER

ESSEX COUNTY COUNCIL CHILDREN'S SAFEGUARDING SERVICE: Head of Children's Safeguarding Service, Licensing Applications, Essex County Council, PO Box 11, Chelmsford, Essex CM1 1LX

HM CUSTOMS AND EXCISE: The National Registration Unit, HMRC, National Registration Unit, Betting & Gaming, Cotton House, 7 Cochrane Street, Glasgow. G1 1HY

ANNEX 3 - USEFUL CONTACTS

The Gambling Commission maintains a list of useful contacts on organisations involved in gambling and their contact details can be found on the Commission's website www.gamblingcommission.gov.uk Some of these organisations provide codes of practice on their particular interest area.

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Committee: Licensing and Environmental Health

Agenda Item

Date: 25 January 2017

4

Title: Immigration Act 2016, Right to Work Checks

Author: Joanne Jones

Item for decision:
yes/no

Summary

1. The purpose of this report is to inform the Committee of the changes for Taxi Licensing contained within the Immigration Act 2016.

Recommendations

2. That Members note the content of this report.

Financial Implications

3. As set out in the body of this report.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. In the preparation of this report the author referred to The Immigration Act 2016 and the Guidance for Licensing Authorities to prevent Illegal Working in the taxi and private hire sector in England and Wales 1 December 2016.
7. The Immigration Act 2016 amended existing licensing regimes in the UK to seek to prevent illegal working in the PHV and taxi sector. Two new sections have been introduced and inserted into the Local Government (Miscellaneous Provisions) Act 1976, 79A and 79B which detail those who are disqualified from holding driver or operator licences by reason of immigration status and explain the meaning of immigration offences and immigration penalties.
8. With effect from 1 December 2016, the provisions in the 2016 Act prohibit all licensing authorities from issuing driver or operator licences to anyone who is disqualified by reason of their immigration status. In order to discharge this duty licensing authorities must conduct immigration checks. This means that in addition to being a 'fit and proper person' an applicant for a driver's licence must not be disqualified from holding a licence as a result of their immigration status.
9. The checking requirements are not retrospective. Licensing authorities must carry out the check when the applicant first applies or first applies to renew their licence or extend their licence on or after 1 December 2016. For those who have time-limited permission to be in the UK, the check must be repeated at each subsequent application to renew or extend the licence until such time as the applicant demonstrates that they are entitled to remain indefinitely in the UK.
10. Currently the majority of driver licences are issued for 3 years (with provision for the grant of a one year or two year licence if the circumstances of an individual application warrant it) however a new s53A has been inserted into the LG(MP)A 1976 covering applicants for drivers licences who only have a limited time to remain in the UK. This prohibits local authorities from granting a licence beyond the period of permission to remain. Identical provisions in relation to Operators licences are contained in section 55ZA covering operators licences for applicants who only have a limited time to remain in the UK. Local authorities may not grant an operators' licence that would continue beyond the limit of leave to remain in the UK.
11. For both drivers and operators, if the person loses the right to remain in the UK during the lifetime of their licence, the licence ceases to have effect. (Section 53A(7) drivers and S55ZA(5) operators). In such cases both drivers and operators are required to return the licence to the local authority within 7 days. If the licence holder, without a reasonable excuse, fails within 7 days to return the licence and badge (in the case of drivers), they commit an offence. The maximum fine is level 3 on the standard scale.
12. The new checks will require additional work on the part of the licensing team. Costs will be associated with the "issue and administration" of the licence so additional expenditure (once known) can be recovered via the drivers and operators fees under section 53 and 70 of the LG(MP)A 1976. These

additional costs would need to be levied across all licensees and will lead to an increase in licence fees for drivers and operators.

13. The Guidance issued by the Home Office indicates that original documents must be checked, but this may be in the physical presence of the applicant or by live video conference. One of our large operators has requested that we look into doing the checks using tablets and face to face internet communication and this is currently being investigated. This approach would have financial implications in terms of one off costs for the tablets, ongoing costs for the use of Skype or Airtime software and increased administrative time to ensure that pre supplied documents are securely handled , stored and returned to the applicants. As this service may potentially not be widely utilised by all our drivers and operators it raises the question of whether such additional costs should be levied across all licensees or whether there should be a specific charge at point of use on top of the licence fee.

Risk Analysis

14. There are no risks associated with this report.

Committee: Licensing and Environmental Health

Agenda Item

Date: 25 January 2017

5

Title: ENFORCEMENT

Author: Tony Cobden, Principal Environmental Health Officer. Tel: 01799 510583

Item for decision

Summary

1. This report is to inform members of the enforcement activities taken since the retirement of Michael Perry and the transfer of his delegated powers to myself in my capacity as lead officer for Licensing.

Recommendations

- .2. That members note the contents of this report.

Financial Implications

3. None arising from this report.

Background Papers

- 4 None

Impact

- 5

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

- 6 Since this committee's last ordinary meeting, the retirement of Michael Perry as Assistant Chief Executive and my appointment as the lead officer for Licensing on 08 August 2016, eleven drivers have been dealt with under delegated powers, One by Christine Oliva and ten by me. All drivers were interviewed for failing to notify the council of a fixed penalty notice within 7 days and invited to offer an explanation as to why this breach of conditions occurred.
- 7 In respect of one case I took no action with regard to the breach as the driver concerned had not driven in a professional capacity since the time of issue of the fixed penalty notice. His vehicle plate had expired and was surrendered at the time of the interview.
- 8 A further case resulted in no action as the driver had never received the original fixed penalty notification as it had gone to the wrong address which was temporarily unoccupied. He did not become aware of the fixed penalty notice until 3 months after it had been issued which then coincided with a family holiday. On reviewing his records he noted his error in not notifying us and contacted us immediately although this was some twelve months later. Given the circumstances and the fact that the individual only drives extremely rarely to, provide emergency cover, it was felt that any suspension would be ineffective.
- 9 In another case I suspended the driver for one day as the driver had telephoned the office to report the breach within 7 days but was advised in line with council policy that such notifications should be made in writing. Due to personal circumstances there was an oversight and this requirement was not followed up. The driver in question fully recognised his error and it was noted that an attempt to notify us had been made.
- 10 In a further case I suspended a driver for two days. As mitigation the driver detailed the personal pressures that they were under at the time. They also stressed that they now fully recognised their responsibility to notify the council in the correct manner.
- 11 In a further four cases drivers were suspended for a period of four days one case recognising that although he informed his manager he had failed to notify us. The other cases all admitted their mistake and provided reassurances that there would be no repeat of the breach.
- 12 In two further cases there were no aggravating or mitigating factors and the starting point for a suspension of five days was imposed.
- 13 With respect to the final case it was noted that in addition to an offence date details of a conviction date for driving with undue care and attention had been given within the information contained on the DVLA search. The driver was

invited to make representation at interview but it was felt that the information provided lacked clarity and consequently the interview was adjourned to allow further information to be sought. It is thought likely that this driver will be referred to the Licensing and Environmental Health Committee for consideration as to what further action may be appropriate as a conviction for an offence could constitute a failure to meet our licensing standards for drivers.

Risk Analysis

14. There are no risks attached to this report.

