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 underwent 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 been 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.

LIC6 **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.