

**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, 3<sup>rd</sup> 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.