

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON
WALDEN, ESSEX CB11 4ER, on THURSDAY, 29 AUGUST 2019 at 11.00 am**

Present: Councillor P Lavelle (Chair)
Councillors C Day, V Isham and P Lees

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

LIC22 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED to exclude the public and press for the following items on the grounds that they contained exempt information within the meaning of s.1 etc

LIC23 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

At 11.15, the Committee retired to make its decision.

At 11.30, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE –

The applicant's application dated May 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he intends to carry out school contract work with 24 x 7 Ltd.

The applicant's application disclosed a number of matters. We have a copy of this document before us. Firstly, there is a discrepancy regarding his residential address. The one stated on the report before us is in London and the one given on the application form is in Southend.

Next, Question 12 asks 'Have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' The applicant disclosed that he received a £600 fine and five penalty points in 2011 for an offence of driving without due care and attention. He also disclosed that he received six penalty points and a £200 fine in 2012 for driving without insurance.

Part of the licensing process requires all applicants to undergo an enhanced Disclosure and Barring Service (DBS) check and the applicant's check was dated 17 May 2019.

The DBS check showed the following convictions:

Conviction 1: Dated 01 December 2008, possessing an offensive weapon in a public place on 18 June 2008: Chelmsford Crown Court: Conditionally discharged for two years and the forfeiture of a metal pole.

Conviction 2: Dated 27 February 2012: failing to surrender to custody as soon as practicable after the appointed time on 21 February 2012: South Essex Magistrates Court: Fined £25 together with one day detention within the Court House, plus a victim surcharge of £15.

We are aware that making a false statement to obtain a licence is an offence under S57(3) of the 1976 Act and that this offence carries a fine of up to £1000 upon summary conviction. Given the potential seriousness of the matters revealed by the DBS check, the applicant was interviewed under caution in respect of them on 26th June 2019. He provided the following explanation.

Firstly, he confirmed that the London address provided is where his mother lives and the Southend address is where his children live. His current work is as a van driver on a zero hour's contract and he wants other employment.

The applicant read the declaration at the end of the application form fluently and confirmed it was his signature. He explained that he completed the application form the previous month and the mistake with the date must have been a memory lapse. Apparently he was in a car accident some time ago when he lost consciousness and since then he has memory lapses.

As to the convictions, the applicant explained that at the time of the first one, he was an apprentice and for some reason had a trolley jack in his vehicle. He said that he had been involved in a car accident, for some reason armed Police attended and saw the trolley jack, and they believed it was an offensive weapon, while as for the second offence, he believed it was due to unpaid fines but he could not remember what they were for. In short, the applicant did not realise that he had a criminal record and explained that he wanted to be a licensed driver because one of his children is disabled so thought this job would be suitable.

It was decided to deal with the matter by way of formal caution and this was administered by Mrs Smith this morning. The applicant therefore does meet the Council's Licensing Standards for drivers, but because of the nature of the offences officers felt it appropriate to refer the matter to ourselves. We have read the papers before us and have heard from the applicant. We have considered the matter in the light of our obligations to the travelling public and are satisfied, since he currently holds a clean DVLA licence and his Group 2 medical certificate reveals no cause for concern, that he is a fit and proper person to hold a hackney carriage/PHV driver's licence. We therefore grant this application and the applicant will receive the paperwork from the Licensing Department in due course.

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S APPLICATION

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report. He confirmed the Group 2 medical certificate was satisfactory.

The applicant said he had had a brain injury and had had to be rehabilitated. He had made a good recovery and was now trying to get his life back on track.

At 11.50, the Committee retired to make its decision.

At 12.20, the Committee returned.

The decision was read to the applicant.

DECISION NOTICE

The applicant's application dated July 2019 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he intends to carry out school contract work with 24 x 7 Ltd.

The applicant's application disclosed a number of matters. We have a copy of this document before us. Question 12 asks 'Have you ever been convicted of any offence (including motoring offences) including spent and unspent convictions in any Court or received a police caution?' Nothing was disclosed by the applicant.

However, part of the licensing process requires all applicants to undergo an enhanced Disclosure and Barring Service (DBS) check and the applicant's check was dated 25th July 2019. It revealed the following convictions:

Conviction 1: Dated 07 April 1992, for offences of theft and criminal damage for which he was fined £20 and £40 respectively and ordered to pay costs. This is an offence of dishonesty.

Conviction 2: Dated 05 April 2011, for offences of driving without due care and attention and failing to give name and address after an accident. He was fined £70, ordered to pay costs and his driving licence was endorsed with 7 penalty points. This matter speaks for itself.

He also received a Police caution on 03 February 2015 for an offence of battery, ie the lowest level of assault.

We are aware that making a false statement to obtain a licence is an offence under S57(3) of the 1976 Act and that this offence carries a fine of up to £1000 upon summary conviction. Given the potential seriousness of the matters revealed by the DBS check, the applicant was interviewed under caution by two

Enforcement Officers on 16th August 2019. He provided the following explanation.

The answers on the application form were partially typed in and the applicant said this was done by 24x7 Limited and they posted it to him to finalise and sign before he had to post it back to them. We interpose that this practice causes us some concern. The answer to question 12 had already been answered by 24x7 Limited, but the applicant had not amended it, and he could not explain this failure in interview and he did not address this point before us today.

He explained that the convictions in 1992, 2011 and the caution in 2015 were not included on his form because he forgot about them. Apparently he had a serious brain injury in 1995 following an accident, was unconscious for a month, was transferred to a specialist brain injury hospital and remained in hospital for 6 months. This has affected what he can do, and he has problems with his memory. We specifically asked about his Group 2 medical certificate and we were told that there is a caveat upon it insofar as it is recommended that he has an annual medical examination rather than one at the usual three year interval.

The applicant was then specifically asked about the 1992 offence and he had no recollection of this. He did have a vague recollection of the 2011 offence and said that he was driving in icy conditions and was cut up by another vehicle which caused him to crash into a wall. The other car drove off but the applicant waited a while for the Police to arrive but they didn't so he called his brother to collect him because it was cold.

Finally, in relation to the battery offence he explained that he was on a bus and some females were being noisy and he asked them to be quiet. One of the girls kicked him as she got off, there was a verbal altercation and the bus driver called the Police. The applicant maintains there was no physical contact. He signed a caution just to finalise the matter and we accept this.

The applicant therefore does meet the Council's Licensing Standards for drivers, but because of the nature of the offences officers felt it appropriate to refer the matter to ourselves. We do have serious concerns.

We have read the papers before us and have heard from the applicant. He told us about his accident and his lengthy hospital stay: that he had made good progress and that he wanted to get his life back upon track. We have every sympathy with him, but our concern is as to whether he could safely drive very challenging children. We understand that he holds a clean DVLA licence and that he has passed the Blue Lamp test required as part of the licensing process, but our primary function is the protection of the public and we cannot help but notice that the 2011 conviction arose out of an accident in bad weather and this concerns us greatly. We repeat, children are in a variety of ways the most challenging of passengers: they have an unerring instinct for weakness and they require to be transported by very careful, alert, and imperturbable drivers, and we cannot be certain that the applicant could safely drive rambunctious children in adverse weather conditions.

It is with the greatest regret that we refuse this application. Our function is the protection of the public and in this case we find ourselves serving as the ultimate safety net. We cannot be certain that the applicant is a safe and suitable driver, and it is for this reason that we have reached the decision we have. He has a right of appeal to the Magistrates Court against this decision and he will receive a letter from the Legal Department explaining this.

LIC25 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

Members watched a video of the driver's dash-cam when the incident took place.

The driver said he thought the other driver was going straight off the roundabout at the previous exit. However he realised as he was going down the slip road that the other driver was still alongside him. He could not brake as he could not tell if there was another vehicle behind him. He had had a licence for 35 years and had never had so much as a parking ticket.

At 1.00, the Committee retired to make its decision.

At 1.15, the Committee returned.

The decision was read to the driver.

DECISION NOTICE

The application before the Panel today is for the suspension or revocation of Mr Hughes' joint private hire/hackney carriage licence number PH/HC1054 under S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence is due to expire on 28th February 2022 and Mr Hughes was first licenced by this authority on 14th March 2016. He drives for 24 x 7 Ltd on school contract work and they have reported the issues before us today to the Council. They have not as yet taken any disciplinary steps against him but in the light of our decision today they are likely to do so.

On 07 May 2019, the Fleet Manager at 24x7 Limited emailed the Council to notify them that they had received a complaint from a van driver who was alleging that the 24x7 Limited driver had run into their vehicle and thereafter failed to stop. 24x7 Limited indicated that they felt the driving by the licensed driver was not acceptable, and they identified the driver. The Council's Enforcement Officer made further enquiries with 24x7 Limited who supplied the following information by email on 16 July 2019:

The incident took place on the roundabout joining A12 Boreham interchange. The licensed vehicle involved was registration FJ56 VDP – Citroen Relay.

The speed of the vehicle looks to be 15-20 mph
There was a slight mark on the vehicle which could have been caused by contact, which simply T Cut out. There was no body work damage upon inspection.
The matter did not go through insurance.
No passengers were on board at the time of the incident.

The Enforcement Officer subsequently carried out a telephone interview with the driver on 02 August 2019. He provided the following account. The incident happened on the Boreham interchange of the A12. The driver had come from the A138 from Chelmsford; he had turned right at the second roundabout to head onto the A12 southbound and had moved into the right hand lane as there were no arrows on the road. He thought this was the correct lane to be in to turn right.

He confirmed that the dashcam was situated on the dashboard in the middle, that he did not see the van in question until it was on the roundabout but that it did not indicate to turn right.

As both vehicles entered the slip road the driver was aware of the van's presence on his nearside but said he was concentrating on driving correctly. He was not aware if there were any vehicles behind him as his vision was obscured by the tail lift in his vehicle. He further claimed the van driver was being aggressive down the slip road and by swinging the van to the right towards his vehicle.

The Enforcement Officer asked the driver why he had not let the van pass his vehicle to avoid a collision and the driver said he would not because he was in the right as he had approached the roundabout in the correct lane. He had not slowed down to let the vehicle pass as it was in his opinion an accelerating lane and that if he did it might have caused an accident with a vehicle behind. At the end of the slip road the van went behind the driver's vehicle and he admitted to hearing two noises when both of the vehicles collided along the slip road but he continued on his journey. He also admitted that there was a small dent on his vehicle, but that the damage was not sufficient to justify an insurance claim.

The driver then explained that while he was on the A12 the van driver pulled alongside his vehicle and started to use his mobile phone to take pictures of the driver and the vehicle. The driver then came off at the next junction and the van driver followed behind. At this stage the driver did not know where the van driver was heading.

The driver headed towards Danbury and the van driver followed the driver. The van driver did not indicate that the driver should pull over. The driver pulled in the doctor's surgery and at this point the van driver came over to him and opened the driver's door as the driver came out the vehicle. The other driver went chest to chest with the driver and said 'do you want some?' He then allegedly demanded the dashcam footage but the driver refused, and explained to the Enforcement Officer that he had refused to engage with the driver because of his aggression.

The van driver then reported the matter to 24x7 Limited by telephone in front of the driver. The passenger assistant was at all material times on board the vehicle but that there were no children on board.

We have read the papers in this case most carefully and we have also viewed the dashcam footage. From this latter we note that the van was not indicating an intention to turn right and that the driver thereof was trying to “push in” to a line of traffic on a single lane slip road.

We have also listened to what the driver has had to say.

On the balance of probabilities we consider that both drivers were equally silly. However, we also accept that rear vision from the driver’s seat would have been limited and that once on the dual carriageway and subsequently in the car park at Danbury the behaviour of the van driver was far worse. We believe that the driver has used the opportunity occasioned by his suspension from his work to reflect upon the situation and we are satisfied that he has learned his lesson and will not be so obstinate in the future. On this occasion we are prepared to give him the benefit of the doubt, and he will retain his licence, but we never expect to see him before us again.

LIC26 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

This item had been deferred at the request of the applicant until the meeting on 30 September.

LIC27 **DETERMINATION OF A HACKNEY CARRIAGE VEHICLE RENEWAL**

The Chair introduced the panel.

The Enforcement Officer gave a summary of the report.

The driver said he had not realised prior to his employment that the majority of his work would take place outside of Uttlesford District. Working around Sawbridgeworth was difficult because some roads were in Uttlesford and some were in East Herts. He had applied to work at Sadlers because many taxi firms do not employ drivers who already own their own cars.

In response to a Member question, the driver said he had not applied to Epping Forest District Council, as they received many applications and had closed off the application process for a few months.

At 14.00, the Committee retired to make its decision.

At 15.25, the Committee returned.

The decision was read to the driver.

DECISION NOTICE –

The application before the Panel today is for the renewal of the driver's hackney carriage vehicle licence number HCV074 under S61 (1) (c) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause. The licence expired on 31st July and the vehicle was first licensed by UDC last year.

The driver lives in London and is a self employed owner/driver for a company called Sadlers Taxis, working from their Sawbridgworth office. All proprietors of hackney carriage vehicles are required to sign a declaration that they will predominantly work within the Uttlesford District.

The declaration reads:

I have been advised that, based upon the decision of the High Court in the case of R. (on the application of Newcastle City Council) –v- Berwick-upon-Tweed BC, Uttlesford District Council ought not to licence Hackney Carriages which will be predominantly used outside the District.

I hereby declare that it is my intention that the vehicle/s licensed by me will be used predominantly in the District of Uttlesford and I understand that should this not be the case either at the date hereof or at any time thereafter the Council may revoke or refuse to renew the licence under section 60(1)(c) Local Government (Miscellaneous Provisions) Act 1976.

The driver most recently signed this declaration on 01 July 2019. He previously signed it on 28 June 2018; his circumstances then were as they are now and accordingly he received a letter from the Council's Environmental Health Manager (Commercial) drawing his attention to the declaration and advising that going forward, the Council would be requiring evidence as to his compliance with this requirement. On receipt of his renewal application, containing the same details, the Enforcement Officer became involved and on 23rd July, requested that the driver submit details of all hackney carriage work undertaken by him since August 2018.

This was supplied by Sadlers Taxis, and analysis of the information provided by them showed that of 1685 jobs undertaken by him for the previous year, 468 either began or ended within the District of Uttlesford. Expressed as a percentage this amounts to 27.77% of his journeys, that is, a very little more than a quarter.

Since 1847 when the provincial hackney carriage industry first became subject to regulation by the legislature, it has been the case that the regulatory regime was intended by Parliament to be local in nature. This was reiterated as recently as 2008 when Christopher Symons QC sitting as a judge of the High Court in the case of *R (ex parte Newcastle City Council) v Berwick upon Tweed Borough Council and Others [2008]EWHC 2369* made the following observations:-

“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.'

"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.'

'In conclusion in my judgment Berwick has a discretion under section 37 of the 1847 Act to refuse to issue licences to those who have 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.'

This case (*Berwick*) remains good law.

However, our attention has also been drawn to the decision of Kerr J in the case of *R (oao Delta Merseyside Ltd and Uber Britannia Ltd) v Knowsley Metropolitan Borough Council* [2018] EWHC 757. (*Knowsley*) This case is at the same level, namely a decision of the High Court, and postdates *Berwick* by ten years. We have been advised that in the event of conflict between two cases at the same level, then the later supersedes the former unless distinguishable on the facts, and though *Berwick* deals specifically with the licensing of hackney carriages and *Knowsley* with that of private hire vehicle operators, there are troubling dicta in *Knowsley* that suggest that licensing authorities may not restrict the freedom to earn a living.

"In my judgment Uber and Delta's submissions are correct and KMBC is wrong. I agree with their contention that it is wrong to describe KMBC as having any discretion in the matter of determining applications for driver's licences for PHVs. It is unfortunately part of judicial life that one frequently hears the word "discretion" lazily misused. Here, the issue of the licence is a mandatory consequence of a finding that an applicant is a fit and proper person to hold the licence.

I do not accept that the authorities relied on by KMBC justify the proposition that a person may be fit and proper to hold a licence if willing to sign up to work predominantly from Knowsley, yet unfit to hold a licence if unwilling to do so. I accept that the phrase "fit and proper" in this context refers to the personal characteristic and professional qualifications of the driver and not to his or her work preferences and visibility.....

I do not think a driver with an impeccable driving record can be fit to hold a licence if working in Knowsley yet become unfit if he or she happens to move to Cornwall. If you are fit and proper in Gateshead, you are fit and proper in Minehead. In none of the cases cited to me involving licences issued to drivers of hackney carriages or PHVs has a court ever held that issues not personal to the applicant, such as location, are relevant to determine fitness to hold a licence.....

The same is true of Delta's fourth and last ground, which is that the policy infringes the freedom of establishment right enshrined in article 49 of the Treaty on the Functioning of the European Union. As is well known, restrictions on that right must be proportionate, ie they must pursue a legitimate aim and adopt a suitable measure for the purpose of achieving that aim, and the measure must be necessary to achieve it, such that it could not be attained by a less onerous method.....

I think it is strongly arguable that the policy imposes a disproportionate burden on licence applicants, since they would have to forego their freedom to base themselves predominantly outside Knowsley, and as I have said, the scheme of the 1976 Act permits that....

Mr Kolvin, for Uber, submitted that any such condition would offend against the Padfield principle because it would be an attempt to curtail the "right to roam" inherent in the 1976 Act...."

We are aware that the decision we take today will set a precedent as to how we licence other hackney carriage vehicles within the District. If we grant a licence knowing that some 75% or more of this vehicle's work is PHV work outside of the District, it makes the requirement to sign the predominant use declaration for hackney carriage vehicle proprietors redundant and makes us potentially a target venue for non-local applicants who the Council will find it very difficult to police. This poses a very real risk to the public.

Mr Chamberlain has provided us with some additional information regarding fees and we have heard from the driver. He may have told us more than he meant to. We note that the vehicle is currently unlicensed, the previous licence having expired at the end of July. It was licensed as a hackney carriage which enables its owner to do PHV work for an operator not holding an Uttlesford operator's licence, and we note the driver lives in London and mentioned Uber. Had the vehicle been licensed as a PHV then it could only have been driven as such while the trinity of licenses was in place and Sadlers do not, we understand, hold an Uttlesford operator's licence. (Nor currently, do Uber operate here). That is the factual situation before us today.

Given this factual situation we have two options available to us. The driver has told us that a considerable number of traditional operators are not interested in

engaging owner/drivers as such and therefore a decision not to licence his vehicle would not prevent him from earning a living, which is the principal issue lying behind the dicta of Kerr J in *Knowsley*. If we do grant him a new hackney carriage licence then we do so knowing that the vehicle will be used to carry out PHV work outside of Uttlesford, and the *Berwick* decision remains good law and is directly applicable to the vehicle; the driver cannot honestly sign the declaration contained in the application form. The question for us is therefore, which option causes the least injustice to the driver, and which poses the least risk to Uttlesford.

The legislation is clear and *Berwick* remains good law. We therefore have no alternative, taking into account all the circumstances, but to refuse the application for a new hackney carriage licence for WD13 ECA. The driver is not prevented from working as a PHV driver and thereby earning a living – he is not obliged to be an owner/driver – and there is nothing to prevent him from applying to the authority issuing Sadler’s Sawbridgeworth operator’s licence for the vehicle: in the meantime we gather it would be possible for him to drive one of their vehicles.

We make this decision with regret but we are aware that the intention of the legislature was to ensure local oversight of hackney carriage licensing. The driver has a right of appeal to the Magistrates Court against this decision, exercisable within 21 days, and he will receive a letter from the Legal Department explaining this.

The meeting ended at 15.40.