

**LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on FRIDAY, 13 OCTOBER 2023 at 1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors G Driscoll and J Moran

Officers in attendance: S Bartram (Licensing Support Officer), K James (Licensing and Compliance Officer), S Mahoney (Licensing and Compliance Manager), S Nemeth (Licensing Support Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: E Smith (Legal Representative, Birketts)

Observers: Councillor M Coletta and K Lolotte (Birketts)

**LIC31 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declaration of interest.

**LIC32 EXCLUSION OF THE PUBLIC AND PRESS**

RESOLVED that under section 1001 of the Local Government Act 1972, the public be excluded for the following items 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.

**LIC33 DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing and Compliance Officer presented their report which asked members to determine an application for a Private Hire Drivers Licence.

The Driver, and a representative from their prospective operator, were introduced.

In response to questions from members, the following was clarified:

- The Driver already had an offer of employment in place, which would be subject to a six-month probation period.
- The Driver had disclosed on their application form that they had an endorsement on their DVLA Driver licence for six penalty points in relation to a CU80 mobile phone offence. They explained that they had committed the offence whilst working for a parcel delivery company and had picked up their mobile phone to check the location of their next drop. This had been witnessed by a police officer who subsequently pulled them over and issued the charge.
- Prior to the most recent offence, the Driver had only been convicted once before for a speeding offence.

- The Driver had been a professional driver for many years and was currently driving a 7.5-ton vehicle. However, they sought to leave this role for health reason and hoped to return to their previous career as a professional chauffeur.
- In their current employment, the Driver was provided extensive, ongoing training, which included a film comparing the impact of mobile phone offences to that of drink driving. They explained that, as a result, they understood the dangers of mobile phone use whilst driving.

A representative from the Drivers' prospective operator addressed the Panel. They outlined the reasoning behind the company's move from Luton Borough Council to Uttlesford District Council, which included a change in the former's Licensing policy and the requirements of UDC being more favourable to the company's model and needs.

They explained that they had read the Council's Suitability policy carefully but was not aware that applicants had to wait until five years had elapsed on a CU80 conviction before they could apply for a licence with UDC. They took their role as an operator seriously by conducting bi-annual licence checks and advising their Drivers not to use the phone whilst working.

*The meeting adjourned at 13:25 and reconvened at 13:38*

#### DECISION NOTICE

The matter before the Panel today is an application for a new private hire driver's licence. If successful the Driver has an offer of engagement. The Driver disclosed in their application form that he had an endorsement on his driving licence in respect of a CU80 mobile phone offence, for which he had received six penalty points. We are charged with determining whether he is considered 'fit and proper' to hold such a licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

- (i) *That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

- (i) *Been convicted of an offence involving dishonesty, indecency or violence: or*
- (ii) *Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.

More specifically, para 4.41 of the Institute's Guidance is clear:

*"Where an applicant has a conviction for using a hand held mobile telephone or a hand held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is later."*

Para 4.39 deals more generally with motoring convictions and states:

*"Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor*

*traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government’s mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of the doubt. If the Sub-Committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”*

Further, para 1.3 of this Council’s Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

Point 2.27 of the ‘Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades’ goes on to state *‘Where an applicant has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later’*

We have had the opportunity of reading the officer’s report in this case, a copy of which has been served on the Driver and we have also seen, as has he, the background documents annexed thereto. These include a number of competency certificates in driving related matters and a written testimonial from the prospective employer. A representative from the prospective employer also

attended before us today and explained the reasoning behind his company's move from Luton to Uttlesford. It appears Luton Borough Council changed their licensing requirements and he considered this Council's more favourable.

We have heard from the Driver and listened very carefully to what we have been told. The Driver said that he had been a professional driver for many years and is currently driving a 7.5 ton vehicle. He wishes to leave this role for health reasons as he finds the manual handling too much and he hopes to return to professional chauffeuring, which is not the same as HC/PHV driving. He said he was still employed at his current company and inter alia they provided considerable training which is on going and included a film comparing the impact of mobile phone offences to that of drink driving. He explained that as a result he now understands just how dangerous mobile phone usage could be and that he will never do it again. In response to a question, though, we were told the contract with the prospective employer would include a six months probationary period and though we believe the employer to be a conscientious operator we cannot restrict a licence to that one employment.

However, mobile phone offences are regarded very seriously by the legislature and by the Council given the number of serious accidents that occur as a result of this distraction. It does not matter whether the phone was being handled to take a call or for any other reason, the distraction remains the same. We have read all the papers before us most carefully and we have listened to what has been said to us.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services. The Council's policies incorporate Government and Institute of Licensing recommendations and therefore amount to best practice.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. The primary function of this Committee is the protection of the travelling public. The legislation makes this clear as does the case law and all authority in the area. Our role is to determine whether or not a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application. As we have already said, mobile phone offences are regarded so seriously that they have a discrete section of the Council's policy dealing specifically with them. This mirrors Government and Institute of Licensing recommendations

We have carefully considered whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and sadly we have to conclude that he is not. He has a job and will receive on-going training there. More accidents occur over any given time period as a result of mobile phone usage than drink driving, and Parliament has tightened the parameters of the offence further to cover usage while the vehicle is stationary but the engine is running. We have heard what the Driver has had to say but the fact remains, he was caught and we cannot run the risk of a repeat offence. Sadly, we are left with no choice but to refuse this application. We regard mobile phone offences as being very serious given the incidence of accidents.

The Driver has a right of appeal to the Magistrates Court against this decision and this right must be exercised within 21 days of the date of our decision. He will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights but we feel it right to warn him that the magistrates cannot grant a licence, all they may do is review the reasonableness of our decision and they will do so in the light of the documents we have quoted above.

#### LIC34 **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing Support Officer presented their report which asked members to determine an application for a Private Hire Drivers Licence.

The Driver addressed the Panel and said that they had been previously licensed in London and kept up their licence after ceasing active driving. They had moved into the property business but had agreed to assign the business to their separation, following their separation. They now hoped to return to their career in chauffeuring.

The Driver explained that they were a Type 1 diabetic and had received an endorsement for a CU80 mobile phone offence after checking their phone for a potential fluctuation in their blood sugar levels. Since the incident, they had installed a different monitor which was connected to their watch to eliminate the requirement to check their phone.

In response to questions from members, the Driver clarified the following:

- There was a discrepancy between the addresses on their DVLA licence and application form as they were living in rented accommodation, should they reunite with their spouse.
- Should they obtain a Licence, the Driver hoped to become self-employed but would initially help their friend, another taxi driver, with their Private Hire work.

*Meeting adjourned between 14:10 and reconvened at 14:24*

#### DECISION NOTICE

The matter before the Panel today is an application for a new private hire driver's licence. We have no information as to which operator the Driver proposes to drive for if successful, he hopes to become an owner driver. In the application form, the Driver disclosed that he had an endorsement on his driving licence in respect of a CU80 mobile phone offence, for which he had received six penalty

points. We are charged with determining whether he is considered 'fit and proper' to hold such a licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence: Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

*(i) That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

*(i) Been convicted of an offence involving dishonesty, indecency or violence: or*

*(ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.



More specifically, para 4.41 of the Institute's Guidance is clear:

*“Where an applicant has a conviction for using a hand held mobile telephone or a hand held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is later.”*

Para 4.39 deals more generally with motoring convictions and states:

*“Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government's mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of the doubt. If the Sub-Committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”*

Further, para 1.3 of this Council's Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

Point 2.27 of the 'Policy on deciding the suitability of applicants and licensees in the hackney and private hire trades' goes on to state *'Where an applicant has a conviction for using a hand-held mobile telephone or a hand-held device whilst driving, a licence will not be granted until at least 5 years have elapsed since the conviction or completion of any sentence or driving ban imposed, whichever is the later'*

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the Driver and we have also seen, as has he, the background documents annexed thereto. These include his DVLA Medical report and a letter from him explaining why he had been apprehended with the phone in his hand. We have read this carefully.

We have heard from the Driver and listened very carefully to what we have been told. We have been told that he was previously licensed in London and kept up his licence after ceasing active driving: he moved into the property business but has agreed to assign that business to his wife as part of a matrimonial settlement.

He also told us that he is a Type 1 diabetic and has been for most of his life. He used his phone to monitor his blood sugar levels and unfortunately on the day concerned when he picked it up to monitor a perceived fluctuation he was seen by the police with it in his hand and consequently apprehended. We have sympathy for him, but he was caught with the phone in his hand and therefore the key elements of the offence have been made out.

However, mobile phone offences are regarded very seriously by the legislature and by the Council given the number of serious accidents that occur as a result of this distraction. It does not matter whether the phone was being handled to take a call or for any other reason, the distraction remains the same. We have read all the papers before us most carefully and we have listened to what has been said to us.

In reaching our decision, we are mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

We take this responsibility seriously. The primary function of this Committee is the protection of the travelling public. The legislation makes this clear as does the case law and all authority in the area. Our role is to determine whether or not a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application. As we have already said, mobile phone offences are regarded so seriously that they have a discrete section of the Council's policy dealing specifically with them.

We have carefully considered whether the Driver is a fit and proper person to hold an HC/PHV driver's licence and sadly we have to conclude that he is not. More accidents occur over any given time period as a result of mobile phone usage than drink driving, and Parliament has tightened the parameters of the

offence further to cover usage while the vehicle is stationary but the engine is running. We have heard what the Driver has had to say but the fact remains, even though he was not making or receiving a phone call and he now has another device fulfilling the same function, nevertheless he was caught and we cannot run the risk of a repeat offence. Sadly, we are left with no choice but to refuse this application. We regard mobile phone offences as being very serious given the incidence of accidents.

The Driver has a right of appeal to the Magistrates Court against this decision and this right must be exercised within 21 days of the date of our decision. He will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights but we feel it right to warn him that the magistrates cannot grant a licence, all they may do is review the reasonableness of our decision and they will do so in the light of the documents we have quoted above.

LIC35 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE**

The Licensing Officers advised the Panel that the Drivers for Agenda Item 5 and 6 were not in attendance.

The Panel agreed that the items be deferred so that the Drivers may be given another opportunity to address the Panel.

*Meeting ended at 14:39*