

LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held in the COMMITTEE ROOM - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, ESSEX CB11 4ER, on MONDAY, 4 JUNE 2018 at 10.00 am

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and A Gerard

Officers in attendance: M Chamberlain (Enforcement Officer), B Ferguson (Democratic Services Officer), J Jones (Licensing Officer) and C Nicholson (Solicitor)

Also Present: Mr Ahmed (Director of Rainbow Travel Limited); Mr Butt (Manager of Reachers Cars and Minibus Limited); the drivers in relation to items 5 and 7; the father of the driver in relation to item 5; B Drinkwater (ULODA) and Councillor M Foley.

1

DETERMINATION OF A PRIVATE HIRE OPERATOR APPLICATION

The Chairman introduced the Panel and the procedure for determining a private hire operator application was read to the applicant.

The Committee considered the Enforcement Officer's report.

Reachers Cars and Minibus Limited had applied on 21 March 2018 for the grant of a private hire operator licence. The address stated on their application was in Stansted, although at a later meeting Mr Butt, a manager of the Company, had said the Stansted office would not be manned. The application stated that they wished to licence 40 drivers and 40 vehicles with Uttlesford to do school contract work in Hertfordshire.

The Council's policy surrounding the licensing of private hire operators stated that the Council would not licence any operators which did not carry out business predominantly in the District of Uttlesford.

The Enforcement Officer said to grant this application would be a departure from the Council's policy and good reasons would need to be given to do this. Members would need to bear in mind throughout their decision making that this applicant had told the Licensing Officer that they would not be operating in Uttlesford and the Council had no evidence that the work was 'accepted' or 'invited' at the address in Stansted.

The Chairman invited Mr Butt to question the Enforcement Officer's report.

In response to a question from Mr Butt, the Enforcement Officer said the Council's Licensing policy had not changed since 2013.

Mr Butt said he had previously withdrawn an application in 2016, due to the Enforcement Officer's guidance that policy changes were forthcoming.

Mr Butt asked how many operators were licensed in the District, but were not operating in the District.

The Enforcement Officer said this was irrelevant to the application.

The Chairman invited Members to question the report.

In response to a Member question relating to the redacted email of July 2016, the Enforcement Officer tabled the original email.

The Solicitor said the email provided background information on why the previous decision to take the application to Committee was made.

Mr Butt was invited to present his own case to the Panel.

Mr Butt said he only wanted to be treated fairly and the same as his competitors. He added that he had been given incorrect information when he had previously applied for an operator's licence and had not been aware that this decision would be taken by Committee.

In response to a question from Councillor Barker, Mr Butt said 99.9% of the Company's work was reliant on school contracts.

Councillor Gerard asked Mr Butt in what area did the Company operate.

Mr Butt said the Company operated across Hertfordshire and said they had jobs in Stevanage, Sawbridgeworth, Cheshunt, London and Birmingham. He said he had always been honest and had never informed the Enforcement Officer that the Company worked predominantly in Uttlesford. He added that if granted a licence the Company could potentially expand its business into Uttlesford.

Councillor Gerard asked if it was fair to say that the Company had no work in Uttlesford.

Mr Butt agreed and said the Company had no work in Uttlesford.

The Enforcement Officer asked Mr Butt why the Company had applied for an Operator's Licence in Uttlesford.

Mr Butt said it was due to the large pool of drivers in Hertfordshire who had been licenced by Uttlesford; if granted an Operator's licence, this pool of drivers could be utilised and work for Reachers Cars.

The Solicitor explained the predominant use criteria but said Members needed to be aware of the Knowsley Council decision, whereby it was determined that a private hire licence could be granted if an applicant was found to be fit and proper, regardless of where they predominantly worked. She said the wording for private hire and operator licences was identical and therefore the same could potentially apply to operator licences. It was for Members to decide whether location had any bearing on an operator's standing of being fit and proper.

At 10.35 the Committee retired to make its decision.

At 11.25 the Committee returned.

The decision was read to the applicant.

Decision

Reachers Cars and Minibus Limited have applied for an operator's licence under s 55 Local Government (Miscellaneous Provisions) Act 1976.

Mr Butt for the company has advised that although they wish to be licensed by Uttlesford, they intend to actually operate private hire vehicles for school contracts in Hertfordshire.

They have stated that they are to have an operating address within the Uttlesford District and have rented an office at Regus House, at Stansted Airport.

The company is properly constituted and still operating and the Council has no other information suggesting that the company, and its directors are not fit and proper to hold an operators licence.

S55 of Local Government (Miscellaneous Provisions) Act 1976 provides that a district council shall grant a licence to an applicant, but that it shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operators licence.

Uttlesford District Council have stated in their licensing policy that they would not licence operators who do not carry on business predominantly in the District, as a result of the case R (on the application of Newcastle City Council) v Berwick on Tweed Borough Council 2009.

In that particular case, the judge did say that Berwick had a discretion under section 37 of the Town Police Clauses Act 1847 whether to issue a licence to the proprietor of a hackney carriage vehicle and that it should not exercise that discretion in a case where the authority knew that the driver intended to operate unregulated outside the area covered by the licence.

That proposition has been used for predominant use policies by authorities across the country to try and prevent applicants for licences undermining the local control of taxi licences by applying for licences with the cheapest authority, with no intention of operating there.

Members consider that an applicant who has little or no intention of working within its boundaries is not a fit and proper person within the terms of section 55, because he would be undermining a principle of "local licensing" that has been recognised as central to the private hire regime provided by the 1976 Act.

Members note the decision in R (on the application of Delta Cars and Uber) v Knowsley Borough Council earlier this year in respect of a predominant use policy for licensing drivers. However, Members note that although a correlation could be made between a predominant use policy in respect of drivers, and one in respect of operators, the two different licences can be distinguished.

Whilst a drivers' licence could be considered a generic licence, and it is well accepted that a private hire driver can carry out his driving within any district if the trinity of licences is held, the situation is not the same for an operator. The intention of the legislation is to have local control, and therefore where an operator intends to operate from is a central part of the consideration of their licence.

Therefore, in this case, Members are mindful of the decision in Knowsley, but the Council's licensing policy is quite clear, that it will not licence operators who do not intend to operate predominantly within the district. This policy has not been challenged by way of judicial review and remains in force.

Mr Butt has been quite clear in his assertion that his business is running school contracts in the Hertfordshire area, and clearly this is not predominantly within the district of Uttlesford.

Members do not have any other good reason to depart from their policy and therefore the application for an operator's licence is rejected, and no licence will be granted.

The applicant is advised that he has a right of appeal against the decision of the committee on application to the Magistrates Court within 21 days of receipt of the written decision.

2 **DETERMINATION OF PRIVATE HIRE OPERATOR APPLICATION**

The Chairman introduced the Panel and the procedure for determining a private hire operator application was read to the applicant.

At 11.30am the Chairman adjourned the meeting to allow the Enforcement Officer to provide the applicant with a paper copy of the report.

At 11.35am the Chairman re-adjourned the meeting.

The Committee considered the Enforcement Officer's report.

The application was submitted on 27 March 2018 for the grant of a private hire operator licence to Rainbow Travel Limited. The address the Company had stated they would operate from was the Regus Building, Stansted. They had initially put on their application form that they would operate from an address in Hemel Hempstead but then had crossed this out. The application form stated that the operator intended to employ 10-15 licensed drivers. At a later meeting with the Licensing Officer, Mr Ahmed, Director of Rainbow Travel Limited, said he had won school contracts from Hertfordshire County Council and he intended to use the Uttlesford licence for this, if granted.

Mr Ahmed had supplied the Enforcement Officer with copies of contracts he would use if granted an operators licence in Uttlesford. All of the contracts were

for school contract work outside of Uttlesford and Essex, and the contracts were made at Mr Ahmed's address in Hemel Hempstead.

The Council's policy surrounding the licensing of private hire operators stated that the Council would not licence any operators which did not carry out business predominantly in the District of Uttlesford.

The Enforcement Officer said to grant this application would be a departure from the Council's policy and good reasons would need to be given to do this. Members would need to bear in mind throughout their decision making that this applicant had not been operating in Uttlesford and the contracts supplied to Enforcement Officer had not been 'invited' or 'accepted' via the Company's Uttlesford office.

There were no questions regarding the report.

The Chairman invited Mr Ahmed to make his case.

Mr Ahmed said he was a fit and proper operator and had two other operators' licences with other Authorities. He said the Regus Office in Stansted was not manned as he did not have an operators licence in this District, and it would not be manned until a licence was granted. He had assumed he would be granted a licence by Uttlesford and had hired a number of UDC licenced drivers in anticipation, who were currently working as driver assistants until the licence was granted. He said this licence was much needed in terms of creating competition with the three or four large companies who were operating in Hertfordshire.

Councillor Barker asked where Mr Ahmed planned to expand his business.

Mr Ahmed said Rainbow Travel Limited operated across Hertfordshire but could move into Uttlesford if granted a licence.

Councillor Gerard asked whether the Company had any work in Uttlesford and, if not, had any preliminary discussions taken place regarding working in Uttlesford.

Mr Ahmed said he had no work in Uttlesford and any discussions relating to working in this District would not occur until a licence was granted.

In response to a Member question, Mr Ahmed said he had not ruled out working in Uttlesford in the future.

In light of this the Enforcement Officer retracted his comment in the report which said, 'this applicant has told the Licensing Officer that they will not be operating in Uttlesford.'

The Solicitor explained the predominant use criteria but said Members needed to be aware of the Knowsley Council decision, whereby it was proven that a private hire licence could be granted if an applicant was found to be fit and proper, regardless of where they predominantly work. She said the wording for private hire and operator licences was identical and therefore the same could potentially

apply to operator licences. It was for Members to decide whether location had any bearing on an operator's standing of being fit and proper.

At 12.00pm the Committee retired to make its decision.

At 12.25pm the Committee returned.

Councillor Foley left the meeting at 12.25pm.

The decision was read to the applicant.

Decision

Mr Ahmed has applied for an operator's licence under s 55 Local Government (Miscellaneous Provisions) Act 1976 and intends to operate through a company called Rainbow Travel Limited.

He has advised that although he wishes to be licensed by Uttlesford, he intends to actually operate private hire vehicles for school contracts in Hertfordshire.

He has stated that he is to have an operating address within the Uttlesford District and has rented an office at Regus House, Stansted.

The company is properly constituted and still operating, and the Council has no other information suggesting that the company, and its directors are not fit and proper to hold an operators licence.

S55 of Local Government (Miscellaneous Provisions) Act 1976 provides that a district council shall grant a licence to an applicant, but shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operators licence.

Uttlesford District Council have stated in their licensing policy that they would not licence operators who do not carry on business predominantly in the District, as a result of the case R (on the application of Newcastle City Council) v Berwick on Tweed Borough Council 2009.

In that particular case, the judge did say that Berwick had a discretion under section 37 of the Town Police Clauses Act 1847 whether to issue a licence to the proprietor of a hackney carriage vehicle and that it should not exercise that discretion in a case where the authority knew that the driver intended to operate unregulated outside the area covered by the licence. That proposition has been used for predominant use policies by authorities across the country to try and prevent applicants for licences undermining the local control of taxi licences by applying for licences with the cheapest authority, or as we have heard, with no knowledge test, with no intention of operating there.

Members consider that an applicant who has little or no intention of working within its boundaries is not a fit and proper person within the terms of section 55, because he would be undermining a principle of "local licensing" that has been recognised as central to the private hire regime provided by the 1976 Act.

Members note the decision in R (on the application of Delta Cars and Uber) v Knowsley Borough Council earlier this year in respect of a predominant use policy for licensing drivers. However, Members note that although a correlation could be made between a predominant use policy in respect of drivers, and one in respect of operators, the two different licences can be distinguished.

Whilst a drivers' licence could be considered a generic licence, and it is well accepted that a private hire driver can carry out his driving within any district if the trinity of licences is held, the situation is not the same for an operator. The intention of the legislation is to have local control, and therefore where an operator intends to operate from is a central part of the consideration of their licence.

Therefore, in this case, Members are mindful of the decision in Knowsley, but the Council's licensing policy is quite clear, that it will not licence operators who do not intend to operate predominantly within the district. This policy has not been challenged by way of judicial review and remains in force.

Mr Ahmed has been quite clear in his assertion that his business is running school contracts in the Hertfordshire area, and clearly this is not predominantly within the district of Uttlesford. Although Mr Ahmed is open to expanding his business in the Uttlesford area, he has not made any enquiries, or put any plans in place that would demonstrate an intention to carry on his business predominantly in the Uttlesford District.

Members do not have any other good reason to depart from their policy and therefore the application for an operator's licence is rejected, and no licence will be granted.

The applicant is advised that he has a right of appeal against the decision of the committee on application to the Magistrates Court within 21 days of receipt of the written decision.

3 EXCLUSION OF THE PUBLIC AND PRESS

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.

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

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The Committee considered the Enforcement Officer's report.

The driver's latest three yearly enhanced Disclosure and Barring Service (DBS) check was dated 24 January 2018. This DBS check revealed a conviction dated 12 January 2016 at Paphos District Court in Cyprus for an offence of foreign legal possession of a class B controlled drug on 28 August 2011. The driver was fined 300 Euros and the conviction was removed from the Cypriot register on 12 January 2018.

The driver attended a meeting with the Enforcement Officer on 06 April 2018 to discuss the matter. He explained that he regularly travelled to Cyprus as he had family there. The driver explained that he was arrested in 2016 upon arrival and was taken straight to Court. He told the Officer that the hearing only took a few minutes in Greek. The driver explained that whilst he can speak some Greek he was not fluent and was unable to fully follow what was being said. He was made to pay a fine at the end of the hearing and thought it was a fixed penalty notice. He had no idea that he had been convicted as he received no paperwork from the Court. At this time, the driver explained that he was looking after both his mother and father. When he was questioned about why he incorrectly completed the renewal document, he claimed he was not aware that he had been convicted, only becoming aware when he received the DBS check in January 2018.

The Enforcement Officer said the driver still met licensing standards as the conviction was now spent. He said the decision before Members was to consider if he remained a 'fit and proper' person to hold a licence due to the nature of the conviction in 2016 and the fact he failed to declare it upon his renewal in 2016. He added that the driver had been an exemplary applicant and had fully cooperated with his investigation.

The Chairman invited the driver to address the Panel.

The driver explained that the cannabis which had been found was for his mother, who was very unwell at the time. In Cyprus he had taken responsibility for the drug, so his mother would not have to face the punishment and shame associated with the possession of drugs. He said he was completely unaware of the conviction and had assumed it was a penalty notice, due to the lack of information provided to him by the Cypriot court. He added that as soon as he was aware of the conviction he had contacted the Council, and the circumstances surrounding his unwell parents had also contributed to the situation.

The driver's father made a statement to the Panel. He said his son had gone through a very difficult time in the past few years as his mother had passed away and he also had been very ill with cancer. He said his son was a good and just person who took his work very seriously; he added that he was reliant on his son's income as he had recently moved back in to help support him through his illness.

The Enforcement Officer said a job offer with 24 x 7 was waiting for the driver if he was granted a private hire licence.

At 12.50pm, the Committee retired to make its decision.

At 1.00pm, the Committee returned.

The decision was read to the applicant.

Decision

The driver holds a joint private hire / hackney carriage driver's licence and has done so since 2012.

A recent DBS check revealed a conviction for possession of cannabis in Cyprus. The offence dated from 2011, but he was only convicted in 2016.

The conviction was not revealed by the driver when he completed his renewal paperwork in 2016, despite the conviction having only recently taken place.

The driver has explained the circumstances surrounding the commission of the offence, which was during a difficult time when he was caring for his mother, and the drugs were being used to provide relief from her illness. The driver has also explained the circumstances of the court case, and the conviction, which took place in Cyprus. He did not understand the proceedings, paid a fine and did not realise with was a full conviction.

Under s61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 members are entitled to consider the suspension or revocation of a drivers licence, where information has come to their attention following the grant of a licence, which falls into the category of 'any other reasonable cause'. This would mean any thing that may lead the Council to reasonably belief that the driver is no longer a fit and proper person to hold a licence.

Members note that this offence actually took place 7 years ago, and is now spent. It was a personal family matter, that took place in difficult circumstances, there have been no convictions or any other issues since, and Members are satisfied that this offence does not make the driver no longer fit and proper to hold a licence.

With regards the failure to notify of a conviction or to reveal it on the renewal form, Members accept the explanation from the driver that he did not understand the nature of the proceedings, or the conviction, and thought it was a fine attached to a fixed penalty notice. Members would like to reiterate the importance of being aware of the licence conditions, and that notifying the Council of cautions and convictions is a vital part of ensuring the safety of the public, by being able to review the suitability of drivers to continue to be licensed and driver. However, they do not consider it necessary to impose any sanction.

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE

The Committee was informed that the driver in relation to Item 6 had surrendered their licence.

DETERMINATION OF PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE

The procedure for determining a private hire/hackney carriage licence was read to the applicant.

The Committee considered the Enforcement Officer's report.

The driver's most recent enhanced DBS check was dated 13 March 2018 and revealed one caution from 2012 which the Council was aware of on his original application for a licence in 2015. The check also revealed a caution from Essex Police dated 08 August 2017 for an offence of being an owner/person in charge of a dog dangerously out of control causing injury on 07 August 2017.

The driver was required under the conditions of his driver's licence to notify the Council in writing of any cautions within seven days of the date of caution, however he had failed to do so.

The driver attended the Council Offices in Saffron Walden on 19 April 2018 to discuss the matter with the Enforcement Officer. The driver said that he had been at the vets in Colchester with his partner and their Staffordshire Bull Terrier on the date of the offence. His dog was wearing an orange harness which read 'no dog' to warn others to keep their dogs away from his. The dog was not muzzled but was separated from other dogs. The driver then dropped something and bent down to pick it up. At this time the lead snapped. The driver explained that a nearby lady started to behave hysterically and thought the driver's dog may attack her, or her dog. She dragged her dog round which set the driver's dog off and both dogs locked onto each other. The driver's partner then pulled the dogs apart. The other dog was slightly injured.

The driver and his partner called the Police straight away to report the matter. The other party logged a complaint with the Police and he attended Colchester Police Station the next day for an interview. After the Police viewed the CCTV footage of the incident they gave the driver a caution which he accepted and advised him to get a muzzle for the dog when he takes it out.

The driver was asked why he did not report the matter to the Council. He said he read the conditions three years ago when he first received his licence but had forgotten them. He also did not think the Council would need to know about the matter as it was not driving related.

The Enforcement Officer said the driver no longer met the Council's licensing standards for drivers due to the undeclared Police caution. The matter before Members was to determine whether he remained a 'fit and proper' person to hold a driver's licence.

At the invitation of the Chairman, the driver read a statement provided by his employer which highlighted his good character as a dependable employee.

In response to a Member question, the driver said he had owned the dog since it was a puppy. The dog was now three years old.

The Chairman asked how the lead had snapped.

The driver said it was a retractable lead and it had snapped as he was bending down. He said he would not use a retractable lead again and now owned a lead which was much stronger.

In response to a Member question, the driver confirmed he had a clean driving licence.

At 1.30pm, the Committee retired to make its decision.

At 1.40pm, the Committee returned.

The decision was read to those present.

Decision

The driver holds a joint private hire/hackney carriage drivers' licence and has done since 2015.

His most recent DBS check has revealed a police caution in respect of being in charge of a dog that was dangerously out of control causing injury. The caution dates from August 2017, and the driver failed to advise the Council as required by his licence conditions.

As a result of the caution, the driver no longer meets licensing standards, and by virtue of s 61 Local Government (Miscellaneous Provisions) Act 1976, the Council can consider whether there is any other reasonable cause that would lead the authority to suspend or revoke his licence. Members have to consider whether as a result of the caution the driver remains a fit and proper person to hold a licence.

Members note that this related to an offence in his private life, which is unlikely to impact on his work as licensed driver. Members consider that the driver remains a fit and proper person to hold a licence.

However, Members do take seriously the failure to comply with the licence conditions, in not notifying the Council of the offence. It is of vital importance that the Licensing Authority is kept informed of any offences committed since the grant of the licence so that the fitness of the driver to hold a licence can be continually reviewed. The Council's licensing enforcement policy indicates that in the case of a failure to notify of an offence, a suspension is the most appropriate sanction, both as a mark of disapproval of the driver's conduct and as a deterrent to others.

In determining whether to suspend a licence and if so in determining the length of suspension, regard will be had by the Licensing Committee to the following factors:

1. Whether the driver fully admitted the matter alleged or whether he or she put forward explanations which were wholly unsustainable.
2. The seriousness of the matter complained of.
3. The driver's past history.
4. Whether the driver has suffered any other penalty in respect of the matters complained of.
5. Any aggravating factors
6. Any mitigation put forward by the driver or his or her representative.
7. The financial effect of any suspension upon the driver acknowledging that he or she will not be able to earn an income from driving during the period of any suspension.

Members have heard how this is a matter related to his personal life and an unfortunate incident relating to his dog. There were no aggravating factors, he accepted the police caution, and this was a case of failing to remember the requirements of his licence to notify of all cautions rather than just those relating to driving. Members have no information relating to the financial effect of any suspension, but consider that a suspension of 1 day would be appropriate in this case.

The driver is reminded of his right to appeal against this decision on application to the Magistrates Court within 21 days of the receipt of the formal decision. The suspension would not take effect until after this period.

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

The driver in relation to Item 8 had notified the Enforcement Officer that he would be unable to attend the Committee meeting.

Members agreed to defer determination of the licence until the next meeting.

The meeting ended at 1.50pm.