

Licensing Committee

A meeting of the Licensing Committee was held on Tuesday, 10th January 2006.

Present: Councillor Mrs Nelson (Chairman), Councillors Coombs, Dixon, Kirton, Leckonby, Leonard, Narroway, Rix and Mrs Wade.

Officers: P K Bell, J Nertney (LD); M Vaines, S Forsythe, S Mills (DNS).

Apologies for absence were submitted on behalf of Councillors Johnson, Roberts, Salt, Mrs Trainer, Woodhead and Woodhouse.

Also in Attendance: P.C. N Bennett (Cleveland Police)

945 Declarations of Interest

Councillor Kirton declared a personal prejudicial interest in respect of agenda item 7 – Application for Combined Drivers Licence – Mr T H as he knew the applicants father very well.

946 Minutes

The minutes of the meeting held on 15th November 2005 were signed by the Chairman as a correct record.

947 Application for Grant of Permit S34(5E) Gaming Act 1968 – 144 High Street, Stockton on Tees

Members were informed that the applicant was not in attendance at the meeting.

RESOLVED that the application be deferred to enable the applicant to be in attendance at the meeting.

948 Exclusion of the Public

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 13 of Part 1 of Schedule 12A of the Act.

949 Hackney Carriage Driver – Mr M.Z

Consideration was given to a report on what action to take in respect of a licensed Private Hire/Hackney Carriage Driver who since disclosing a formal Police Caution under Section 4, The Public Order Act 1986 on his renewal application had been prosecuted for using a mini bus without an appropriate licence and who had been the subject of a complaint from Cleveland Police regarding his attitude and behaviour.

Mr M Z was a combined hackney carriage and private hire driver and has been licensed with this authority since 1989 and his current licence will expire on 31st May 2006.

On the 29th April 2005 Mr M Z submitted his driver renewal application form on which he had declared he had received a Caution from Cleveland Police under Section 4 Public Order Act 1986, which is Fear or Provocation of violence. A copy of the application form was attached to the report.

Mr M Z was interviewed on the 17th June 2005 regarding the caution he had received, a copy of the record of interview was attached to the report.

Since the renewal of his licence an email was received from Vehicle and Operator services agency (VOSA) which brought to Licensing Services attention that on the 29th June 2005 Mr M Z was prosecuted by VOSA and was convicted of using a 16-seater mini-bus with No Passenger Service Vehicle Operator licence contrary to Section 2(1) Public Passenger Vehicle Act 1981. He received a fine of £500 and costs against him of £148. Mr M Z was required under his combined driver licence conditions to inform the licensing office within seven days of any conviction imposed during the period of the licence. He informed the Licensing Office that he received this conviction on the 15th July 2005, which was over two weeks after he received the

conviction; therefore Mr M Z had breached his licence conditions. A copy of the email was attached to the report.

On the 15th August 2005 a complaint was received from a Cleveland Police Officer who had cause to stop Mr M Z. The Police officer stated in his statement that Mr M Z had been abusive to him, details of which were attached to the report.

Mr M Z was interviewed on the 17th August 2005 regarding the conviction he received for using a 16-seater mini-bus with No Passenger Service Vehicle Operator licence and also regarding his attitude and behaviour towards the Police Officer. A record of the interview was attached to the report.

Members were reminded that under the provisions of Section 61(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of a hackney carriage and/or private hire driver on the following grounds: -

- (a) That he has since the grant of the Licence: -
 - (i) Been convicted of an offence involving dishonesty, indecency or Violence; or
 - (ii) Been convicted of an offence under or fails to comply the provisions of the Act of 1847 or of this part of this Act; or
- (b) Any other reasonable cause.

Mr M Z was in attendance at the meeting and was given the opportunity to outline his case.

The Committee had regard to the report and documentary evidence put before them including the two formal interviews and the witness statement of PC Neil Bennett. The Committee also heard oral submissions from Mr M Z and PC Neil Bennett.

The Committee noted that there were three separate matters which were before them and which were relevant to Mr M Z's licence, namely:-

1. Mr M Z's conviction for using a 16 seater minibus with no passenger Service Vehicle Operators Licence contrary to Section 2 (1) of the Public Passenger Vehicle Act 1981.
2. Mr M Z's caution under Section 4 of the Public Order Act 1986
3. The incident when Mr M Z's was aggressive and verbally abusive towards a Police Officer in the course of his duty

With regard to issue number 1 this was not in dispute, Mr M Z accepted he had received the conviction. It was also noted that Mr M Z was technically in breach of his driver licence conditions as he did not inform the Council within seven days of receiving the conviction. However the Committee noted that to his credit Mr M Z did inform the Council, albeit late.

In respect of issue number 2 Mr M Z stated that he had been attacked by a number of employees from the Parkmore Hotel who were attending a staff night out at the premise. Mr M Z and some of the other persons allegedly involved in the incident were arrested at the scene and Mr M Z was bailed to appear at Stockton Police Station. The Committee noted that when Mr M Z returned to the Police station some weeks later Mr M Z accepted a caution for a Section 4 Public Order Act offence. To summarise this offence a person is guilty if he uses towards another person threatening, abusive or insulting words or behaviour with intent to cause that person to believe immediate unlawful violence will be used against them. Mr M Z stated that he only accepted the caution because he had family business to attend to and were unaware of the implications of accepting the caution. The Committee did not accept that Mr M Z was unaware of the implications of accepting a caution. A caution would normally be administered by a more senior Police Officer and Mr M Z would have been informed of the nature of a caution and what it meant to accept a caution i.e. that it was an admission of guilt for the offence and would appear on his CRB check.

In respect of issue number 3 the Committee noted that Mr M Z categorically denied that he had spoken to and acted towards the Police Officer in the manner alleged. The Committee considered this incident on the balance of probabilities and found that Mr M Z had acted in the manner described by the Police Officer. The Committee also believed that Mr M Z had been untruthful in his version of events and his denials of the incident. The behaviour described by the Police Officer could reasonably be found to be similar to that for which Mr M Z accepted a caution in relation to the Parkmore Hotel incident i.e. Mr M Z used abusive and insulting words. This would have been unacceptable if Mr M Z had acted in that manner to a member of the public but was in the view of the Committee aggravated by the fact that Mr M Z acted in this manner towards a Police Officer acting in the course of his duty. This behaviour was not fit and proper and furthermore was in breach of Mr M Z's driver licence conditions to "act in a civil and orderly manner at all times".

The Committee had regard to the written character references which Mr M Z circulated.

RESOLVED that after considering all of the evidence and submissions made the Committee found that Mr M Z was not a fit and proper person to hold a combined Hackney Carriage/Private Hire Drivers Licence and the three incidents described above were deemed to be a reasonable cause to revoke Mr M Z's licence under the Local Government Miscellaneous Provisions Act 1976 Section 61 (1)(b).

950 Combined Driver – Mr T J

Consideration was given to a report on a licensed private hire/hackney carriage driver's manner of driving and use of a mobile phone whilst driving.

Mr T J was a licensed Hackney Carriage/Private Hire driver. He was first licensed on 8th May 1996, his current license would expire on 30th November 2006.

On 30th September 2005 the Licensing Unit received a Complaint from a Police Inspector regarding Mr T J's manner of driving and use of a mobile phone whilst driving.

A copy of the complainant's statement was attached to the report.

On the 11th October 2005 Mr T J was formally interviewed by a Licensing Officer in regard to the above matter. A copy of the record of interview was attached to the report.

Officer records showed that Mr T J was sent a letter on 10th December 2003 regarding his manner of driving as he had accumulated nine points on his DVLA license. He was given the choice of attending the National Driver Improvement Course or being put before the Licensing Committee. He attended the course on the 30th September 2004 and 1st October 2004.

Earlier this year in Queens Avenue, Thornaby Mr T J received a verbal warning from Craig Barnes (Licensing Officer) for using his mobile phone while driving.

Members were reminded that under the provisions of Section 61 (1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke or refuse to renew the licence of a hackney carriage and/or private hire driver on the following grounds:-

That he has since the grant of a licence:-

- (i) been convicted of an offence involving dishonesty, indecency or violence;
or
- (ii) been convicted of an offence under or fails to comply with the provisions of the Act of 1847 or of this part of this Act;
- (iii) any other reasonable cause.

Mr T J was in attendance at the meeting and given the opportunity to outline his case.

RESOLVED that Mr T J be given a written warning as to his future conduct and this letter be kept on his Combined Driver file.

951 Application for Combined Drivers Licence – Mr T H

Consideration was given to a report on an application that had been received for a private hire driver's licence from an applicant who had had a previous application refused because of drug and theft related offences.

Mr T H had submitted an application form on the 20th June 2005, to become a licensed private hirer driver with this authority. A copy of his application was attached to the report.

Mr T H first applied to become a licensed driver with this authority on 26th August 2004. An important part of the process was to undertake a Criminal Record Bureau check. This was done and returned to the applicant with a copy being sent to the Local Authority. The record disclosed that Mr T H had a number of convictions, including possession of Class B drugs and theft.

It was felt appropriate to interview Mr T H at the time regarding his convictions, this was done and a copy was attached to the report.

The Trading Standards & Licensing Manager refused Mr T Hs application on the 1st December 2005, using his delegated powers, on the grounds that he was considered not to be a fit and proper person because of his convictions. In the refusal letter it stated 'whilst you may wish to make a further application at any time, and it would be judged on it's merits at the time I would advise you that the adopted guidelines suggest that you demonstrate a period of at least 3 years free from any further convictions/cautions since your last caution/conviction before an application will be entertained'. A copy of the refusal letter was attached to the report.

Shortly after this letter was sent Members are respectfully reminded that the Policy on Relevance of convictions was adjusted to say any person with the types of offences Mr T H had been convicted on would have to demonstrate a period of at least 5 years free from any further convictions/cautions since their last caution/conviction. A copy of the Relevance of Convictions was attached to the report.

Mr T H had re-applied to become a licensed driver and a further Criminal Record Bureau check had been carried out on Mr T H and this had revealed no further convictions since his previous application. A copy of his Criminal Record Bureau check was available at the meeting.

Member were reminded that under the provisions of section 51(1)(a) of the Local Government Miscellaneous Provisions Act 1976 which instructs District Councils not to grant a licence to drive private hire vehicles unless they are satisfied that the applicant is a fit and proper person to hold such a licence.

Mr T H and his solicitor were in attendance at the meeting and were given the opportunity to outline their case.

Members were informed that the adopted guidelines stated that if an applicant had been convicted of a crime then at least 3 years should pass before an application will be entertained.

As Mr T H had demonstrated a period of at least 3 years free from any convictions/cautions Members felt that Mr T H's application should be approved together with a written warning to his future conduct.

RESOLVED that:-

1. Mr T H's application for a Combined Drivers Licence be approved and Mr T H be given a written warning as to his future conduct and that this letter be kept on his driver file for any future reference.

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2. The adopted guidelines be revised to state that a period of 5 years free of conviction for any drugs related offence must pass before an application will be entertained.