

Licensing Committee

A meeting of the Licensing Committee was held on Tuesday, 28th February 2006.

Present: Councillor Mrs Nelson (Chairman), Councillors Dixon, Johnson, Kirton, Leckonby, Leonard, Rix, Roberts, Salt, Mrs Wade and Woodhead.

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

Apologies for absence were submitted on behalf of Councillors Coombs, Narroway, Mrs Trainer, and Woodhouse.

1135 Application for Grant of Permit S34(5E) Gaming Act 1968 – 144 High Street, Stockton on Tees

Consideration was given to a report on an application for the grant of a permit for the use of machines for gaming by way of amusements with prizes on premises at 144 High Street, Stockton-on-Tees.

The application had been received from The Noble organisation Ltd on behalf of Matchurban for the grant of a permit for the use of machines for gaming by way of amusements with prizes under the provisions of Section 34(5E) of the Gaming Act 1968 for a proposed amusement arcade to be situated at 144 High Street, Stockton-on-Tees.

A copy of the application was attached to the report.

The Chief Constable, the Chief Fire Officer, the Planning Officer and Environmental Health Manager had no objections to this application.

Ward Councillors, local businesses and residents had been consulted on the application and no objections have been received.

An analysis of other premises holding Section 34 permits in this area was provided for Members information. Members were respectfully reminded that a new permit was granted for premises at 106 High Street, Stockton at Licensing Committee held on 1 November 2005.

Members were advised that the applicant was closing an existing licensed arcade at 134 High Street and effectively moving the business to these premises. It was also a planning condition for these premises that 134 High Street cease trading as an amusement arcade.

A copy of Home Office Circular No. 100/1988 in respect of amusement-with-prizes machines was attached to the report for Members information.

Members were respectfully reminded that under the provisions of Schedule 9, paragraph 8(2), The Gaming Act 1968 the local authority had an unfettered discretion as to the grant of a permit.

Members were also reminded that the council had passed resolutions under the provisions of Schedule 9 not to grant or renew permits relating to specified classes of premises and to limit the number of machines in certain other classes of premises. A copy of minute 894, November 1977, which related, was attached to the report for Members information.

A plan showing the location of the premises was attached.

Mr Etchells (Nobles Organisation) was in attendance at the meeting and was given the opportunity to state his case.

Members felt that as the application was a re-siting of the current 134 High Street, Stockton on Tees operation and it would have a similar number of

machines and the hours of operation were the same, the application should be approved.

RESOLVED that the application for a Permit S34(5E) Gaming Act 1968 at 144 High Street, Stockton on Tees be granted.

1136 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.

1137 Combined Driver NO. 694 Mr CMS

Consideration was given to a report on a licensed Hackney Carriage/Private Hire driver who had been suspended by the Licensing Officer, following a complaint of a serious assault (G.B.H with intent) for which he had been charged by Police and was awaiting Crown Court Trial.

At the time of this meeting Mr C M S was a licensed combined driver. He was first licensed on 13th December 2001, his licence was due to expire on 31st December 2006.

On 4th October 2005 the Licensing Unit received a complaint from Mr A R who stated that he had been assaulted at the Taxi Rank in Yarm by Mr C M S on the evening of Sunday 18th October 2005. This assault resulted in Mr A R sustaining serious injuries, including a fractured eye socket and cheek bone, which resulted in him being hospitalised and operated on having metal plates inserted into his face

Mr A R also made a formal complaint to the Police, which resulted in Mr C M S being arrested and charged with G.B.H. with intent. Mr C M S's trial was due to commence after 29th March 2006 at Teesside Crown Court. Because of this pending trial Mr C M S had not been interviewed by Licensing Officers regarding this matter.

Due to the serious nature of this complaint Mr C M S's Hackney Carriage/Private Hire drivers licence was suspended by the Licensing Officer using delegated powers. A copy of the letter was attached to the report. Mr C M S had appealed against this decision and the magistrates Court had agreed to defer the hearing until 24th March 2006 to enable the Licensing Committee to give consideration to this matter.

Members were respectfully reminded under the provisions of Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 the Local Authority may, suspend, revoke, or refuse to renew the licence of a driver on any of the following grounds.

- a) That he has since the grant of the licence:-
 - i) been convicted of an offence involving dishonesty, indecency or violence.
 - ii) been convicted of an offence or fails to comply with the provisions of the Act of 1847, or part of this Act or,
- b) Any other reasonable cause.

Mr C M S was in attendance at the meeting and was represented by his Solicitor, Mr Cheng of Vickers, Chisman and Wislade Solicitors.

The Committee had regard to the report and heard oral submission from Mr Cheng. It was noted that no evidence of the alleged assault was put before the Committee as this was sub judice.

The Committee noted that Mr C M S had been charged with Grievous Bodily Harm with intent contrary to Section 18 of the Offences Against the Person Act 1861. It was noted that Mr C M S was acting in the course of his employment as a licensed taxi driver when the alleged assault took place. Mr C M S had pleaded not guilty to the charge and the trial would be heard at Teesside Crown Court on a date yet to be arranged.

The Committee noted that Mr C M S's licence had been suspended by the Licensing Officer pending the report to Committee. It was also noted that Mr C M S had exercised his right of appeal against the suspension of his licence and this was listed for a hearing on 24th march 2006 at Teesside Magistrates Court.

The matter for the Committee to consider was whether there was a reasonable cause to suspend Mr C M S's licence under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

The Committee also gave consideration to Mr C M S's rights under the Human Rights Act 1998. It was noted that the suspension of Mr C M S's licence was a potential infringement of his human rights under the said Act. The Committee noted that interference with a persons human rights can take place if it is deemed to be 'proportionate'.

The Committee were of the view that the matter of which Mr C M S was charged was a serious criminal offence which had allegedly been committed while Mr C M S was acting in the course of his employment as a licensed taxi driver. The Committee were of the view that the overriding issue for them to consider was public safety and to protect members of the public from the risk of potential harm. As no evidence had been considered by the Committee they made no findings of guilt in relation to Mr C M S. The Committee agreed with the Licensing Officers decision to suspend Mr C M S's combined Hackney Carriage and Private Hire Drivers Licence. Mr C M S's licence would be suspended till the outcome of his criminal trial in the Crown Court when a decision would be taken as to whether the suspension should continue or depending on the outcome of the trial whether revocation should follow. These were matters that could only be determined after the conclusion of Mr C M S's criminal trial in the Crown Court.

RESOLVED that:-

1. The Licensing Officers decision to suspend Mr C M S's combined Hackney Carriage and Private Hire Drivers Licence be confirmed.
2. Mr C M S's licence be suspended till the outcome of his criminal trial in the Crown Court when a decision be taken as to whether the suspension should continue or depending on the outcome of the trial whether revocation should follow.

1138 Private Hire Driver NO. 496 – Mr W S P

Consideration was given to a report on a licensed Private Hire driver whose licence renewal had been deferred until he had been interviewed by a Licensing Officer but he had failed to attend for interview to date. The reason for the deferral is that Mr W S P informed the Licensing Unit that he had been charged and fined by Cleveland Police for shouting and swearing in the street. Mr W S P had been invited to attend interview on four occasions but to date had not attended, and his renewal application had not been determined.

Mr W S P was a licensed Private hire driver, driver number 496. He was first licensed on 19th September 2002 and his current license application was subject to determination. A copy of the application was attached to the report.

On 14th July 2005 Mr W S P informed the Licensing Unit in writing that he had been charged and fined £80.00 by the local Police for shouting and swearing in the street. A copy of the letter was attached to the report.

Mr W S P was sent a letter on 26th September 2005 asking him to attend interview on 30th September 2005. Mr W S P telephoned cancelling the appointment. When asked when he could attend for interview he would not commit to a date stating that he worked away and did not know when he would be in the area. A copy of the letter was attached to the report.

On 3rd October 2005 Mr W S P was sent a letter informing him that the renewal of his license had been deferred until an authorised Officer had conducted an interview with him. A copy of the letter was attached to the report. Mr W S P did not respond to this letter.

On 14th October 2005 he was again written to asking him to contact the Licensing Unit within 7 days with a date to attend interview, warning him that failure to do so could result in his renewal being passed to the Licensing Committee for a decision in his absence. No response was received. A copy of the letter was attached to the report.

Finally on 23rd November 2005 he was written to again asking him to attend interview on 1st December 2005 at 13:00pm. At 13:30pm he had not attended. On telephoning Mr W S P to enquire why he had not attended at the given time, he stated that he had forgotten. He was informed that this was not acceptable and the matter would now be referred to the Licensing Committee. A copy of the letter was attached to the report.

Members were respectfully reminded that under the provisions of Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 the Local Authority may suspend, revoke, or refuse to renew the licence of a driver on any of the following grounds:-

- a) That he has since the grant of the licence:-
 - i) been convicted of an offence involving dishonesty, indecency or violence.
 - ii) been convicted of an offence of fails to comply with the provisions of the Act of 1847, or part of this Act or,
- b) Any other reasonable cause.

Mr W S P was in attendance at the meeting and was given the opportunity to state his case. Mr W S P explained that he was a long distance lorry driver now but he still wanted his Private Hire Driver License as a fall back in case he ever needed it. Mr W S P also explained the reasons behind the £80 fine and the reasons for his non attendance at the appointments.

Members felt that this whole process had taken up a lot of Member and Officer time which could have been avoided if Mr W S P had come into the Licensing Services Office and explained his situation. Mr W S P agreed and apologised for the inconvenience he had caused everyone and agreed to respond immediately to any future letters that are sent to him.

RESOLVED that Mr W S P's application for a Private Hire Driver License be granted with a warning as to his future conduct.

The Licensing Officer informed Members that Mr M K H had requested that the item be deferred as he had a tribunal on the day of this meeting. The Licensing Officer had outlined that Members would probably agree to defer the item. The Licensing Officer then wrote to the complainants outlining that the item would probably be deferred and that they wouldn't be needed at this meeting. Mr M K H subsequently contacted the Licensing Office to say he could attend this meeting. The Licensing Officer then telephoned the complainants to see if they could attend but unfortunately they could not attend because of personal reasons.

Mr M K H and Mr M were in attendance at the meeting and wanted to proceed with the item but Members felt that the item be deferred as the complainants could not attend.

RESOLVED that the item be deferred.

1140 Private Hire Driver – Mr J W

Consideration was given to a report on an application for renewal of private hire drivers licence from an applicant who had previous application was approved by this committee for a trial period of 6 months.

On Tuesday 12 July 2005 members approved an application for a licence to drive private hire vehicles from Mr J W for a trial period of six months because of concerns over his history of convictions, and subject any renewal application being determined by this committee. A copy of the report considered at the time and a copy of the meeting minute was attached to the report.

Members were advised that since the grant of the licence Mr J W had received no further convictions and there had been no complaints regarding his conduct.

Member were reminded that under the provisions of Section 61(1) 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.

RESOLVED that Mr J W's application be granted.

1141 Hackney Carriage Driver – Mr I M Y

Consideration was given to a report on what action to take in relation to 3 complaints that have been received from residents in Middlesbrough concerning a licensed hackney carriage driver. These complaints related to dangerous driving, assault and harassment. Also considered was that Mr I M Y had been convicted of 2 offences, which he had failed to declare within 7 days as, required; the first of these convictions dates back to March 2005.

Mr I M Y was a licensed Hackney Carriage Driver with the authority and had been licensed since 1999.

On the 10 January 2005 the Licensing Services Office received a complaint that Mr I M Y had nearly hit a pedestrian in Urswick Close Middlesbrough and continually drove his taxi dangerously. A copy of the complainant's statement was attached to the report.

On the 2 February 2005 a further complainant statement was taken and she also outlined that Mr I M Y had nearly hit a pedestrian whilst driving his taxi and Mr I M Y had assaulted her. A copy of the complainant's statement was attached to the report.

On the 11 February 2005 a further complainant statement was taken who stated that Mr I M Y had verbally abused her on a regular basis. He had also spat in her face and pushed her. A copy of the statement was attached to the report.

Mr I M Y was interviewed in relation to the allegations made against him and during the interview denied all of them. He did go on to say that he has recently been charged with Assault, Inflicting Grievous Bodily Harm on a resident. A copy of the interview was attached to the report.

Further information was received from Middlesbrough Council that Mr I M Y had recently been convicted of Assault. Middlesbrough Council was also pursuing an Anti Social Behaviour Order against Mr I M Y. A copy of the email from Middlesbrough Council was attached to the report.

Following this information contact was made with the legal services department of Cleveland Police who confirmed that on 18/03/05 Mr I M Y was convicted of Using an Insurance document with intent to deceive contrary to 1.173 (1) (a) Road Traffic Act 1988 and was fined £1000.00.

On the 13/02/06 Mr I M Y was convicted of Assault Occasioning Actual Bodily Harm in relation to an incident on 30/10/05 contrary to Section 47 OAPA 1861 and Battery (same day) contrary to Section 39 Criminal Justice Act 1988 – and was given a Community Order of 12 Months, Supervision Required, unpaid work request's for 100 hours. A copy of this email was attached to the report.

Mr I M Y was given a severe reprimand in March 2004 when information was returned from the Criminal Record Bureau that he had been had been convicted of soliciting a woman for prostitution contrary to Section 2 Sexual Offences Act 1985 and he failed to notify the conviction at that time. A copy of the warning letter was attached to the report.

Members were reminded that under the provisions of Section 61(1) 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 I M Y had been provided with a copy of the Committee report and supporting papers which had been hand delivered to his home address. It was noted that Mr I M Y had been invited to attend the meeting but he was not in attendance.

The Committee had regard to the complaints which had been received regarding Mr I M Y's conduct and behaviour in relation to his neighbours in Middlesbrough. After considering this evidence the Committee found that on the balance of probabilities Mr I M Y had not behaved in a civil and orderly manner towards his neighbours. In particular Mr I M Y had made homophobic and abusive comments to his neighbours. Mr I M Y had also driven in an irresponsible and dangerous manner which had caused concern and distress to his neighbours. These were all matters which the Committee deemed to be not fit and proper behaviour for a licensed Hackney Carriage driver.

The Committee were also informed of more serious matters namely Mr I M Y's criminal convictions which he had failed to declare to the Council.

The criminal convictions were:-

- 13/02/06 – Assault occasioning Actual Bodily Harm on 30/10/05 contrary to Section 47 of the Offences Against the Person Act 1861 and Battery (same day) contrary to Section 39 Criminal Justice Act 1988. Mr I M Y was sentenced to a Community Order for 12 months with a Supervision Requirement and 100 hours unpaid work.
- 18/03/05 – Using an insurance document with intent to deceive contrary to Section 173(1) (a) Road Traffic Act 1988. Mr I M Y was fined £1000.00.

The Committee deemed these criminal convictions to be of a serious nature.

After giving due consideration to all of the evidence before them the Committee agreed that the convictions for assault, battery and using a false document all fell within the scope of the Local Government (Miscellaneous Provisions) Act 1976 Section 61 (1)(a)(i). Furthermore Mr I M Y's behaviour to his neighbours was not fit and proper behaviour. Mr I M Y had also failed to inform the Authority that he had received the criminal convictions.

RESOLVED that Mr I M Y's Hackney Carriage Drivers Licence be revoked as his convictions and behaviour meant that he was not a fit and proper person to hold such a licence.