

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 5th September, 2006.

Present: Cllr Mrs K F Nelson (Chairman), Cllr C Coombs, Cllr K Dixon, Cllr P Kirton, Cllr K Leonard, Cllr R Rix, Cllr J M Roberts, Cllr F G Salt, Cllr Mrs J Wade, Cllr B Woodhead.

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

Also in attendance: For agenda item no.4 - Mr Strange(Hackney Carriage Association); For agenda item no.5 - Mr A H, Mr Ross(Solicitor representing Mr A H); For agenda item no.6 - Mr W H.

Apologies: Cllr Johnson, Cllr Leckonby, Cllr Narroway, Cllr Trainer and Cllr Woodhouse.

482 Declarations of Interest

Councillor Kirton declared a personal and prejudicial interest in respect of agenda no.6 as he knew Mr W.H on a personal level.

483 Minutes of the meeting held on 25th July 2006 - To be signed by the Chairman as a correct record.

The minutes of the meeting held on 25th July 2006 were signed as the Chairman as a correct record.

484 The Licensing of Eastern European Drivers as Private Hire Drivers

Consideration was given to a report which outlined a request from a company who recruited men and women from Poland, Slovakia and the Czech Republic to become licensed private hire drivers in this country. Consideration was given as to whether the authority would accept them as suitable applicants for licences with the authority.

The recruits would undergo a criminal record check in their own country equivalent to the CRB check, this would then be stamped and notarised by the applicable government department and this in turn would be translated into English and again stamped and notarised by a government approved translation body. A copy of such a record was available at the meeting.

They would also undergo an extensive medical in a local hospital to ensure they are of good health and without diabetes, heart problems and any terminal illness. This again would be translated into English, stamped and notarised.

The trainees would also be required to produce a clean European Driving Licence and to have held it for a minimum of two years, be fluent in English and be over 25 years of age.

Discussions with a neighbouring authority that had experience of dealing with such applicants revealed that whilst accepting their criminal record documentation, they also required such applicants to undergo a full medical in this country to the standards required for UK applicants and to complete all other entry requirements including the DSA Taxi Drivers Test and local knowledge tests.

In addition they had also advised that as there were potential problems in endorsing a European Driving Licence the DVLA had a voluntary system where the driver registers with them using a 'D9 Form' and they are then issued with a GB counterpart licence which can then be endorsed with convictions and penalty points. Members wished to make this a mandatory requirement of the application process if such applicants were considered suitable.

Members were informed that the CRB did publish some information on dealing with applicants from overseas, which identified details of the designated body responsible for criminal records, when one existed, for various countries and which did include Poland and Czech Republic.

Members were advised that under the provisions of Section 51(1)(a) The Local Government (Miscellaneous Provisions) Act 1976 district councils were instructed not to grant a licence to drive private hire vehicles unless they are satisfied that the applicant is a fit and proper person.

Members were respectfully reminded that in order to determine 'fitness', applicants for licences in this authority are required to: -

- (a) Make a formal application, which includes making a statutory declaration.
- (b) Submit to a CRB check.
- (c) Submit a medical form, provided by the Council, completed by his or her own G.P. or a G.P. who has access to their medical records.
- (d) Have held a full driving licence for at least 12 months.
- (e) Have passed the DSA Taxi Drivers Test.
- (f) Sit and pass a written test on the law and local licence conditions, use of an A to Z, and some local topographical knowledge.

A guidance leaflet produced for applicants was attached at Appendix 1 for Members information and a copy of the Licensing Department's driver application pack was available at the meeting.

Members were minded to accept applications from Eastern European drivers. It was proposed that in addition to producing their own criminal record check, translated into English, they be subject to the same requirements as any other applicant, with the exception of submitting a CRB disclosure, unless they had been a resident in this country for more than six months when a CRB disclosure would be required; they undergo a full medical in this country to our standard and it be a mandatory requirement that such applicants also register with the DVLA and apply for a GB Counterpart licence.

RESOLVED that Members be minded to accept applications from Eastern European drivers subject to:-

1. Producing their own criminal record check, translated into English, from the designated body identified by the CRB where appropriate.

2. They be subject to the same requirements as any other applicant, with the exception of submitting a CRB disclosure, unless they had been a resident in this country for more than six months when a CRB disclosure would be required.

3. When a CRB disclosure would be required; they undergo a full medical in this country to our standard and it be a mandatory requirement that such applicants also register with the DVLA and apply for a GB Counterpart licence.

485 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 1 of Part 1 of Schedule 12A of the Act.

486 Hackney Carriage Driver - Mr A.H

Consideration was given to a report on what action to take in relation to a driver who had an undeclared conviction for soliciting a woman for prostitution from a motor vehicle causing nuisance to other persons on 26th September 2003 Contrary Section1(1)(a) Sexual Offences Act 1985 which came to light on his Criminal Record Bureau Check.

Mr A H at the time of this meeting was a licensed private hire driver with the Authority and had been since December 1999 and his licence would expire on 30th November 2006.

Members were reminded that a Criminal Record Bureau Check was carried out on licensed drivers every 3 years and when Mr A H's was returned on 21st July 2006 it revealed the fact that Mr A H had Solicited a woman for prostitution from a motor vehicle causing nuisance to other persons on 26th September 2003 Contrary Section1 (1)(a) Sexual Offences Act 1985 and was convicted of this offence on 25 March 2004. A copy of Mr A H's Criminal Record Bureau Check was made available at the meeting.

It was felt necessary to interview Mr A H due to the seriousness of the offence and the fact that he had failed to declare the conviction as per condition 12 of his private hire drivers licence, which states 'The driver shall within 7 days disclose to the Council in writing details of any conviction (including Motoring Offences or otherwise) imposed on him during the period of the licence'.

Mr A H was interviewed on Thursday 3rd August 2006 and during the interview Mr A H explained that he had notified the Council of the conviction, however the Council had no record of the notification letter. Further searches through Mr A H's driver file and the Administration post book had proved negative. A copy of the interview was attached to the report at Appendix 1.

Records had shown that Mr A H had his private hire drivers licence revoked by the Authority on the 19th December 2002. Meeting minute 1005 referred and was attached as appendix 2 of the report.

Mr A H appealed against the Committee's decision to revoke his private hire driver's licence and the Magistrates Court upheld Committee's decision. However Mr A H appealed to the Crown Court where his appeal was upheld and his private hire drivers licence was reinstated.

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.

A copy of the Relevance Of Convictions was attached at appendix 3 of the report for Members attention.

The Committee had regard to the report and appendices, copies of which had been provided to Mr A H and his legal advisor prior to the meeting. The Committee also had regard to additional evidence from Middlesbrough Council, with whom Mr A H was also licensed, who confirmed that Mr A H had not notified them of his conviction for soliciting a woman for prostitution. The Committee felt that this was relevant as it went towards his credibility as a witness especially, but not restricted to, the fact that Mr A H maintained he had informed Stockton Council even though the Council had no record.

The issues which the Committee considered were:-

1. Mr A H's conviction on 25th March 2004 for soliciting a woman for prostitution contrary to the Sexual Offences Act 1985.

2. Whether on the balance of probabilities Mr A H had informed the Council of this conviction as required by the driver licence conditions which state that drivers shall "within seven days disclose to the Council in writing details of any conviction(including motoring offences or otherwise) imposed on them during the period of the licence".

Mr A H and his legal representative (Mr Ross) were in attendance at the meeting and were given the opportunity to outline their case.

The Committee noted that Mr A H had maintained he had given the Council written notification of the conviction for soliciting a woman for prostitution contrary to the Sexual Offences Act 1985. Council officers had confirmed that the Council had no record of having received any correspondence from him with regard to the conviction. Checks had been done of the Licensing Service's post book which records receipt of any correspondence. There was no record of receipt of any letter from Mr A H notifying the Council of the soliciting conviction. Furthermore there was no record held on Mr A H's driver's file of receiving any

such correspondence. It was also noted that Middlesbrough Council had confirmed that Mr A H had also failed to inform them of this conviction.

The Committee were of the view that Mr A H had wilfully failed to disclose his conviction for soliciting to the Council as under the Council's guidelines such offences were considered to be serious and new applicants would normally have to show a period of five years free from conviction before an application would be considered. The Committee found that Mr A H had failed to disclose it within seven days as required by his driver licence conditions and he had also failed to disclose it on his subsequent renewal form in October 2005.

RESOLVED that:-

1. Mr A H's Private Hire Drivers Licence be revoked under Section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976, as Mr A H was no longer deemed to be a fit and proper person to hold a licence because of his conviction for soliciting a woman for prostitution, the fact that he failed to notify the Council of this conviction as required by his driver licence conditions and he failed to include details of this conviction on renewal application forms in October 2005.

2. Members of the Committee indicated that although Mr A H may apply for a licence at any time they were of the view that he should wait a minimum period of five years from this meeting before submitting a further application to Stockton on Tees Borough Council. This indication was given to assist Mr A H in deciding when he should re-apply. Any future application would be considered on its merits but would note the comments of this Committee.

487 Application for Hackney Carriage Hire Driver Licence - Mr W.H

It was noted that there was a preliminary matter to consider as the Council had received notification that Mr W H wished to dispute the enhanced Criminal Records Bureau check that had been provided to the Council. The issue concerned the fact that the CRB check included details of charges which were brought against Mr W H which had allegedly resulted in Mr W H being acquitted. The record showed not guilty discontinuance. It was not clear whether this meant the matter had been to a trial and Mr W H had been found not guilty or whether the proceedings had been discontinued i.e. had not been concluded by a verdict. The Committee noted that there was still uncertainty over this issue as during Mr W H's interview, as is his right and on advice from his solicitor, Mr W H had failed to answer questions on this issue. It was noted that Mr W H's Solicitor Mr Ross had written to the CRB disputing the record and was of the view that such information should not be included on the enhanced CRB check. The Council had received a letter from the CRB confirming this matter and referring to the guidance and code of practice, which stated "where a prospective employee or volunteer disputes the information provided in a Disclosure, that dispute will need to be resolved before the employer can reach a recruitment decision".

As Mr W H's solicitor had chosen to write to the CRB and dispute the record, as opposed to arguing that it was not relevant and should not be considered, the Committee were of the view that they should follow the CRB's guidance and

defer consideration of this matter until Mr W H had received a response from the CRB and this matter was concluded.

The Committee assured Mr W H that this would be dealt with at the earliest possible opportunity once the query with the CRB had been resolved.

RESOLVED that Mr W H's application for a Hackney Carriage Driver Licence be deferred.

(Councillor Kirton declared a personal and prejudicial interest in respect of the above item and withdrew from the meeting)