

## Licensing Committee

A meeting of Licensing Committee was held on Thursday, 19th April, 2007.

**Present:** Cllr Mrs K F Nelson (Chairman); Cllr M Cherrett, Cllr E Johnson, Cllr P Kirton, Cllr C Leckonby, Cllr K Leonard, Cllr R Rix, Cllr F G Salt, Cllr Mrs J Wade.

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

**Also in attendance:** For Issue of Hackney Carriage Licences Item - M Strange (Chairman of Stockton Hackney Drivers Association), D Walker (Secretary of Stockton Hackney Drivers Association).  
For J M Application Item - J M, J M's Father, Mr Ross (Solicitor for J M).  
For S D Item - S D, A W Kharn (S D's Employer).  
For D J R Item - D J R, Mr Ross (Solicitor for D J R).

**Apologies:** Cllr Dixon, Cllr Narroway, Cllr Mrs Trainer, Cllr Woodhead and Cllr Woodhouse.

### 1308 Declarations of Interest

No interests were declared.

### 1309 Minutes

The minutes of the meeting held on 19th April 2007 were signed by the Chairman as a correct record.

### 1310 Issue of Hackney Carriage Licences

Consideration was given to a report which detailed a written request from Stockton Hackney Carriage Drivers Association to commence a survey of "unmet demand" and to suspend the issue of any further hackney carriage licences pending the outcome of the ongoing consultation on current 'taxi' policies.

Stockton Hackney Carriage Drivers Association had requested that the Council consider implementing a survey of 'unmet demand' and suspending the issue of any further hackney carriage licences until a final decision is made on the regulation of vehicle licences. A copy of this letter and an associated 'consultation paper' was attached to the report for Members information.

Members were respectfully reminded that the issue of whether the Council should consider stopping the issue of further hackney carriage licences was one of the points subject to the ongoing consultation exercise which was approved at the meeting held on 13th February 2007 (Minute 990 refers).

Under the provisions of Section 37 The Town Police Clauses Act 1847 a district council may licence hackney carriages of any kind. Before the amendment of the section by the Transport Act 1985 most councils practised some form of quantity control of the local hackney carriage trade by limiting the number of hackney carriage licences to be issued under this section.

However this section was qualified by Section 16 of The Transport Act 1985 in that a district council may refuse an application for a hackney carriage vehicle licence in order to limit numbers only if they were satisfied that there was no significant demand for taxi services within the area to which the licence would

apply. This did not mean that district councils must limit taxi numbers if they were satisfied that demand in their area was totally met, but acts to forbid district councils from restricting numbers for any other reason.

The Department of Transport in its Circular on the Act (3/85) issued advice to district councils on the grant of taxi licences at that time and an extract from this Circular was attached to the report.

In Stockton the numbers of hackney carriages used to be strictly controlled but with the passing of the Transport Act 1985 the Council commissioned a survey which showed that there was no significant unmet need, as a result of which no further licences were issued (Minute 2175, 12 January 1987 refers).

However this decision was challenged successfully by Members of the trade in the Crown Court when the Council was instructed to issue further licences. This resulted in the Council deciding to abandon quantity controls and allowing market forces dictate the numbers of hackney carriage licences (Minute 1993, 7 December 1987 refers).

Whilst this position had been reconsidered by the Committee on several occasions during the early nineties, it still remained to date and as mentioned above was now one of the issues subject to the ongoing consultation exercise.

Members were respectfully reminded that The Department Of Transport publication 'Taxi and Private Hire Vehicle Licensing: Best Practice Guidance' made reference to the quantity restrictions of taxi licences outside London when it states: "Most local licensing authorities do not impose quantity restrictions; the Department regards this as best practice." A copy of the relevant pages from this document were attached to the report for Members information and a copy of the full document was available in the Members library and could also be viewed on E-Genda.

If Members were minded to approve the request for a survey of unmet demand then it was proposed that an independent consultant be commissioned to carry out the survey.

With regard to the request to suspend the issue of new hackney carriage licences case law suggested that the only practical way to do this to satisfy the requirements of section 16 The Transport Act 1985 would be to continue to accept applications but to agree to defer any decision as to whether to grant the licence subject to the review of policy and/or the results of any unmet demand survey. Applicants would need to be fully informed of this and the implications of making such an application. Members were advised that such a decision could however be subject to the risk of an aggrieved applicant applying for a judicial review.

Members were reminded that there are currently 297 hackney carriage licences issued in Stockton. Stockton Hackney Carriage Drivers Association was recognised by the Committee as an appropriate body for consultation purposes on matters appertaining to hackney carriage licences. They currently have 126 members and a copy of their current constitution was attached to the report for Members information.

M Strange (Chairman of Stockton Hackney Drivers Association) and D Walker Secretary of Stockton Hackney Drivers Association) were in attendance at the meeting and were given the opportunity to outline their request.

After consideration of the report and the written and oral representations that were made to them at the meeting the Committee did not feel that the request was justified at this time owing to the fact a current consultation exercise was taking place with the whole of the taxi trade. The consultation includes a number of issues which could if, deemed appropriate, deal with a number of the concerns put forward by the Association.

The Committee were not convinced by the argument put forward by the Stockton Hackney Drivers Association and did not feel that a survey was justified at this time nor that the issue of Hackney Carriage Licences should be suspended. Although the Committee urged the Association to respond to the consultation document in order for their views to be further considered by them.

RESOLVED that the request from Stockton Hackney Carriage Drivers Association to commence a survey of unmet demand and suspend the issue of hackney carriage licences be refused.

**1311 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 items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

**1312 Private Hire Operator - TV**

Members were informed that the applicant had requested that the above item be deferred.

RESOLVED that the above item be deferred and considered at the next meeting of the Committee.

**1313 Application For A Private Hire Drivers Licence - Mr J.M.**

Consideration was given to a report that detailed an application for a private hire drivers licence from an applicant who's Criminal Record Disclosure had other relevant Information disclosed at the Chief Police Officer(s) discretion relating to incidents of violence.

Mr J M had submitted an application form on the 27th February 2006, to become a licensed private hirer driver with the authority. A copy of his application was attached to the report.

An important part of the vetting 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 whilst he had not been convicted of any offence in 2004 and 2005 Mr J M was arrested on three separate occasions in connection with violence offences.

The first incident was when Mr J M was arrested for 'actual bodily harm' against a 60 year old lady, she suffered injuries to her nose (suspected fractured nose) enquiries proved negative and he was released with no further action taken against him or any other party.

On the 30th August 2004 he was arrested for 'affray' as a result of enquiries made Mr J M was released and another individual was charged and convicted of the offence.

On the 16th July 2005 Mr J M was arrested for 'grievous bodily harm – wounding'. The circumstances were that Mr J M approached the injured party in a street, an argument ensued and escalated in to a fight between the parties. The injured party was left with a possible fractured skull and a broken nose however, he declined to prosecute and this resulted in no further action being taken against either party. A copy of the disclosure was available at the meeting.

Mr J M was interviewed regarding his the relevant information on his disclosure on the 2nd August 2006 and a copy the transcript was attached to the report.

A copy of the Councils guidance on the Relevance of Convictions was attached to the report for Members information.

Member were reminded that under the provisions of Section 51(1)(a) 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 J M, Mr Ross (Solicitor for Mr J M) and Mr J M's father were in attendance at the meeting and were given the opportunity to state their case.

Members had regard to the report and appendices, copies of which had been provided to Mr J M and Mr Ross, prior to the meeting. Members also listened carefully to what Mr J M and Mr Ross had to say with regard to the matters disclosed on the Criminal Record Disclosure. The Committee were concerned that the Police had thought it necessary to include such information on Mr J M's CRB check. Albeit Mr J M was not charged with any offence Mr J M was still linked to three instances which included the use of violence. The Committee noted Mr J M's explanation in relation to the first two incidents that he had merely been in the vicinity at the time or for the most recent incident were acting in self defence in a family dispute.

Members deliberated over their decision as to whether they were satisfied at this time whether Mr J M was a fit and proper person to hold a licence. The Committee felt that the inclusion of such information on Mr J M's CRB was relevant but Members also noted that Mr J M had not been charged with any offence. Members agreed to grant Mr J M's application with a strict warning as to his future conduct. The Committee reminded Mr J M that as a licensed driver he should show a high standard of good conduct and behave in a civil and orderly manner at all times.

If any similar incidents are brought to the attention of the Licensing Authority this

could call into question Mr J M's fitness to hold a licence and would result in Mr J M being put in front of the Licensing Committee.

A copy of the letter would remain on Mr J M's file and may be referred to should similar instances or any other complaints about Mr J M's behaviour be reported.

RESOLVED that Mr J M's application for a Private Hire Drivers Licence be granted with a strict warning as to his future conduct.

**1314 Private Hire Driver - Mr S.D.**

Consideration was given a report on a licensed private hire driver who had been convicted for illegally plying for hire contrary to section 45 of the Town Police Clauses Act 1847, and using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988.

Mr S D was a licensed private hire driver with the authority and had been since 2005. His current licence was due to expire in July 2007.

Legal proceedings were instituted against Mr S D in March 2007 following an enforcement operation undertaken by Officers in October 2006 when he agreed to carry under cover officers in his private hire vehicle without being pre-booked.

Mr S D pleaded guilty at Teesside Magistrates Court on 8th March 2007 for illegally plying for hire contrary to section 45 of the Town Police Clauses Act 1847 and using a vehicle uninsured against third party risks contrary to the Section 143 Road Traffic Act 1988.

Mr S D was fined £100 for each offence (£200 in total) with 8 penalty points on his DVLA drivers licence for the no insurance offence. He was also ordered to pay £63.86p towards costs.

Member 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 adopted guidelines relating to the Relevance of convictions was attached as appendix 1 for member's information.

Mr S D and A W Kharn (Stockton Cars) were in attendance at the meeting and were given the opportunity to state their case.

The Committee had regard to the report and appendices, copies of which had been provided to Mr S D, prior to the meeting. They also listened carefully to what Mr S D had to say with regard to his personal circumstances.

The Committee noted Mr S D's personal circumstances including the fact that he had a partner and three children and was looking to purchase his own home. Although the Committee had sympathy with Mr S D's personal circumstances they were aware that following the case of Leeds City Council v Hussain [2002] EWHC 1145 (Admin) such circumstance were irrelevant save perhaps in very rare cases to explain or excuse the conduct of the driver. Mr S D's circumstances were not such as to explain or excuse his conduct and as such were not deemed to be relevant to their consideration of this matter. A person holding a licence to drive Private Hire Vehicles must be deemed to be fit and proper. The mitigation which Mr S D put forward including his personal circumstances did not in the Committees view make him a fit and proper person to hold a licence.

Members decided to revoke Mr S D's licence.

In deciding to revoke Mr S D's licence the Committee took into account the following factors:-

1. Mr S D had wilfully and knowingly committed the offence of plying for hire without a licence and as such was convicted of this offence. An offence under the Town Police Clauses Act 1847 was a specific ground for the revocation of a licence under Section 60(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976.

2. Members also noted that Mr S D had been convicted of using a vehicle without insurance (IN10), under the Councils guidelines on the relevance of convictions this was classed as a major traffic offence. Applicants with such a conviction would normally be expected to show a period of four years following conviction before an application would be considered. The safety of passengers was paramount and Mr S D's actions in plying for hire meant that he was not covered by his insurance policy which could have had serious implications for Mr S D and members of the public.

3. In addition to the convictions Members also noted that Mr S D had 11 points on his DVLA drivers licence and that it would be two years before the first three points will be removed.

RESOLVED that Mr S D's Private Hire Driver Licence be revoked under the provisions of Section 60 (1) of the Local Government (Miscellaneous) Provisions Act 1976.

### **1315 Hackney Carriage Driver - Mr DJR**

Consideration was given to a report on a Hackney Carriage Driver who had failed to declare a relevant caution on his application to renew his Hackney Carriage Drivers Licence.

Mr D J R has been licensed by the Authority since April 1984. His current

licence was due to expire on 29 February 2008

Mr D J R applied to renew his Hackney Carriage Drivers licence on 26 February 2007. He failed to declare an Adult Caution he had received from Cleveland Police for Common Assault on 12 February 2007. A copy of his application was attached as appendix 1 to the report.

This was in relation to a domestic incident on the same day 12 February 2007, with his current partner. She had, had concern for her own safety and she telephoned the Police for assistance.

On 7 March 2007 Mr D J R was interviewed regarding the incident and the subsequent caution and a copy of the record of interview was attached as appendix 2 to the report.

Member 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 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; 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.

Members were respectfully reminded of the Councils adopted guidelines on the Relevance of Conviction. A copy was attached at appendix 3 to the report for Members information.

Mr D J R and his solicitor (Mr Ross) were in attendance at the meeting and were given the opportunity to state their case.

After consideration of the report and the comments made by Mr D J R and his solicitor, Mr Ross, at the meeting, the Committee decided on this occasion to issue Mr D J R with a final written warning as to his future conduct.

Members expressed their concern both in relation to Mr D J R's caution and to the fact that he had failed to declare it to the Council on his renewal application.

Members did not condone Mr D J R's actions and should Mr D J R therefore receive any further cautions, convictions or fail to comply with the conditions of his licence then his continued fitness to hold a hackney carriage driver's licence would be reconsidered by the Committee when this warning will be revisited.

RESOLVED that Mr D J R be issued with a final written warning as to his future conduct.

**1316 Combined Driver - Mr O.L.**

Members were informed that Mr O L was not in attendance at the meeting and therefore agreed to defer the item.

RESOLVED that the item be deferred and that Mr O L be advised that if he does not attend on the next occasion then the matter may be considered in his absence. Should Mr O L not advise officers of his reason for his failure to attend then this could be taken as him holding the Committee in contempt.