

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 27th November, 2007.

Present: Cllr William Woodhead (Chairman); Cllr Dick Cains, Cllr Ken Dixon, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Kath Nelson, Cllr Maurice Perry, Cllr Roy Rix and Cllr Fred Salt.

Officers: Ms P Edwards, Mr T Hussain, Mr S Mills, Mr M Vaines (DNS); Mr P K Bell, Mr J Nertney (LD).

Also in attendance: Mr F Hayes (Chairman of the Standards Committee), Mrs F Robinson (Member of the Standards Committee); For the Street Trading Consent item - Mr and Mrs McCarton; For the Mr M G item - Mr M G and Mr G Burns (Royal Cars); For the Mr Z A G item - Mr Z A G and Mr D Walker (Representative); For the Mr S L item - Mr S L.

Apologies: Cllr Eileen Craggs, Cllr Kevin Faulks, Cllr Paul Kirton, Cllr Tina Large and Cllr Lee Narroway.

L Declarations of Interest

42/07

There were no interests declared.

L Consent Street Trading - Mr PMc

43/07

Consideration was given to an application for the grant of a seasonal Street Trading Consent in respect of a trader who wanted to trade in Stockton High Street and to which a letter of concern had been received and the grant of which would exceed the policy guidelines for the number of consents permitted for this area.

The application had been received from Paul McCarton for the grant of a Street Trading Consent to permit the sale of tea, coffee and hot and cold snacks from a trailer in Stockton High Street. A copy of the application was attached to the report.

The applicant wanted to trade between the hours of 07.00 am and 18.00 pm each Monday, Tuesday, Thursday, for one calendar month commencing 26 November, and had identified preferred trading locations as either outside 133 High Street or outside 137 High Street

A plan showing these locations was attached to the report.

The Group Leader (Traffic Management) and Environmental Health Manager had no objections to this application.

The Town Centre Manager had not objected to the application but requested that if Members were minded to grant the application then it be subject to a condition allowing her to relocate his trading site if it was considered necessary to avoid conflict with any events organised during this period and a copy of her email was attached to the report.

Ward Councillors and local businesses had been consulted on the application and no objections had been received

A copy of the adopted guidelines in respect of Street Trading Consents was attached to the report for Members information. Members were referred to Section E in respect of the special provisions relating to Stockton High Street,

which stated that the general policy was to limit the number of consents to two.

Members were advised that this applicant is currently a market trader at this location and that there were three other street trading consents issued for Stockton High Street in respect of the open-air coffee shop and two for seasonal traders during this same period.

Members were reminded that under the provisions of Schedule 4 the Local Government (Miscellaneous Provisions) Act 1982 the council may grant a consent if they think fit and may attach such conditions to it as they consider reasonably necessary.

Mr and Mrs McCarton were in attendance at the meeting and were given the opportunity to outline their application.

Members felt that the application would be detrimental to Stockton High Street and that there was already adequate provision of tea, coffee and hot and cold snacks on Stockton High Street.

RESOLVED that the application be refused as it would be detrimental to Stockton High Street and that there is adequate provision of tea, coffee and hot and cold snacks on Stockton High Street.

L Review of Licensing Policy Statement

44/07

Members were informed that the Council was required by the Licensing Act 2003 to review its Statement of Licensing Policy at least every three years. Council approved the current Statement of Licensing Policy in December 2004. Members were presented with a report that detailed the results of consultation on a draft-reviewed statement of licensing policy.

The opportunity had been taken to review the policy and remove those sections that dealt with the transitional provisions under the Act that no longer apply and to update contact details etc. The policy had received no adverse comments since the transfer of licensing functions to the authority and it was not felt necessary to make any major changes. None of the responsible authorities had requested any changes. The draft-reviewed policy as sent out for consultation was attached to the report.

Consultation was undertaken with the following:

- a. Cleveland Police Force;
- b. Cleveland Fire Brigade;
- c. Existing Premise Licence holders;
- d. Existing Club Premise Certificate holders;
- e. Existing Personal License holders;
- f. Representatives of businesses and residents in the Stockton Borough Council area;
- g. The Local Safeguarding Children's Board;
- h. Trade bodies and Associations; and
- i. A number of Solicitors Practices who undertake licensing work in this area.

Two substantive responses were received from the trade, from the British Beer & Pub Association and the Association of Convenience Stores, and these were attached to the report. The response from the British Beer and Pub Association made both specific points on the draft statement of licensing policy and more generic points. The Association of Convenience Stores was a generic letter sent to all authorities and did not make any points that were not already covered by the draft revised licensing statement of policy.

Changes had been made to paragraph 40 and Appendix 1, paragraph 1 to make it clear that the risk assessment is recommended practice rather than a requirement. Paragraph 137 made reference to the Enforcement Concordat and the authorities Regulatory Services Enforcement Policy; these already take account of the Hampton principles and therefore do not require repeating in the Statement of Licensing Policy.

Appendix 1 paragraph 4 was not a reference to a cumulative impact policy, this authority does not have one and however, these were factors that Members of the Licensing Committee would take into consideration if they received representations about an application.

RESOLVED that:-

1. The draft review Statement of Licensing Policy and the comments made by consultees be noted.
2. Members comments on the draft review be included in a report to Cabinet/Council for final approval of the reviewed Statement of Licensing Policy.

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45/07

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.

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46/07

Private Hire Driver - Mr MG

Consideration was given to a report on a conviction imposed on a licensed private hire driver 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

At the time of this meeting Mr M G was a licensed private hire driver. He had been licensed since 1990 and his current licence was due to expire on 30 November 2008.

Legal proceedings were instituted against Mr M G on the 30 April 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. On the night in question Mr M G refused to be interviewed by officers of this Council because he wanted an interpreter. However records showed that Mr M G was interviewed at the roadside by officers of this council in

1990 and no interpreter was needed a copy of this interview was attached to the report.

Also Mr M G was also interviewed at the roadside by a Police sergeant on the 25th July 1992 and no interpreter was needed then. A copy of the Police Sergeants statement and a record of the interview were attached to the report.

Mr M G was found guilty in his absence at Teesside Magistrates Court on 12th June 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 M G was fined £150 for plying for hire and £300 and 6 penalty points on his DVLA drivers licence for the no insurance offence. He was also ordered to pay £50 towards costs.

Members were advised that the prosecution followed a 'test purchasing' exercise carried out jointly by Licensing Officers, Trading Standards Officers and Cleveland Police in October last year in the Prince Regent Street area of Stockton following complaints from the hackney carriage trade about private hire vehicles illegally plying for hire in this area.

Mr M G appealed against the conviction to the Crown Court and he attended Court and was also represented by a Barrister. Mr M G had indicated that he did not understand English very well and there was talk of having to obtain an interpreter. The Judge indicated that this was worrying given that Mr M G is a licensed taxi driver. After a long delay as to whether or not he wished to have an interpreter Mr M G decided that he wished to abandon his appeal. On behalf of Mr M G his barrister indicated that he was 62 years old and had a wife and a 21 year old daughter who lived in the family home. Mr M G paid all the household bills as his wife did not work, he took home approximately £150 per week after deductions. He had no savings as he used these to help his son purchase his house.

Mr M G and Mr Gerry Burns from Royal Cars who was representing Mr M G were in attendance at the meeting. Also Mr Hussain from Trading Standards was in attendance to help if necessary with any interpretation.

Members had regard to the report and appendices, copies of which had been provided to Mr M G, prior to the meeting. Members also had regard to the statement of means form which had been completed by Mr M G and to the comments made at the meeting by officers and Mr M G's representative.

Members noted that Mr M G did not work for many hours per week; Mr M G indicated that he worked between 10 – 15 hours. However evidence was available to show that in April 2007 Mr M G had worked over 280 hours during the month. This showed Mr M G had a fairly considerable income in that month and that did not take into account any money Mr M G would have earned from passenger tips. The Committee informed Mr M G that they had to be clear about what hours he was working as this could have an impact on their decision i.e. if Mr M G worked few hours and had little income from his taxi driving then there would be little impact on him should his licence be revoked. If Mr M G worked

many hours then there would be a greater financial burden on him should his licence be revoked. Members found Mr M G's answers to be particularly evasive when asked to provide clarification on the hours he worked and which hours he had worked over the last months.

In making their determination Members took into account the following factors:-

1. Mr M G had wilfully 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 is a specific ground for the revocation of licence under Section 61(1)(a)(ii) of the Local Government (Miscellaneous) Provisions Act 1976.
2. Members also noted that Mr M G had been convicted of using a vehicle without insurance (IN10), under the Council's 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 M G's actions in plying for hire meant that he was not covered by his insurance policy which could have had serious implications for Mr M G and members of the public.
3. In addition to the convictions the Committee also noted that there was a discrepancy between the statement of means form Mr M G had completed which detailed he earned £80 per week. When Mr M G appeared before the Crown Court on his appeal in October 2007 he had informed the Court, through his Barrister, that he earned £150 per week. The Committee were provided with a copy of a shift report for the month of April 2007 from Royal Cars which showed he had worked 285 hours and earned £2102.50p in cash. When asked by the Committee if he declared his income to the Benefits department he stated "yes, I declare it every year". However, documentary evidence was produced to Members from the Council's Benefits Department who confirmed that Mr M G had not reported any income since 2004. The Committee found Mr M G to be dishonest in this matter.

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; or
- (iii) any other reasonable cause

A copy of the Council's adopted guidelines on the relevance of convictions was attached to the report for Members information.

RESOLVED that:-

1. Mr M G's licence be revoked as his behaviour was not that of a fit and proper person licensed by the Authority.
2. Under Section 61(2)(B) the revocation take immediate effect as Mr M G had put his passengers at risk by driving without insurance and had been dishonest.

**L
47/07**

Combined Driver - Mr ZG

The Licensing Officer reported that he had just received the following items of evidence:-

1. A statement from a member of staff at the taxi test centre regarding Mr Z A G and an incident on 25th June 2007.
2. A statement from a member of staff at the taxi test centre regarding Mr Z A G and an incident on 26th June 2007.
3. An email from Councillor Walmsley outlining the situation at Mr Z A G's family home.

The Licensing Officer asked if Members and Mr Z A G wanted to consider the evidence as it had been produced late and had not been circulated with the original papers. Both parties agreed that the evidence could be considered and were given the opportunity to read the evidence.

Members then considered a report on a number of incidents reported by members of the public and licensing administration staff regarding the conduct of a Licensed Hackney Carriage and Private Hire Driver.

At the time of this meeting Mr Z A G was a licensed hackney carriage and private hire driver. Mr Z A G had been a licensed driver since August 2006 and his current licence would expire on 31 August 2008.

Mr Z A G was issued with a Written Warning as to his future conduct as he had not disclosed his motoring convictions on his new application.

During late night enforcement on 25 November 2006, officers were involved in a joint operation with Cleveland Police when HCV 529 was seen travelling at speed, the police vehicle followed then stopped HCV 529. At the time it was not possible to issue a fixed penalty notice as the police vehicle had not followed the Hackney Carriage for a prescribed distance. When stopped, the driver was identified as Mr Z A G. Mr Z A G was issued with oral advice by the police as to his manner of driving. The Licensing Officer at the time also verbally advised Mr Z A G the offence for failing to wear his driver badge, failing to display dash display badge and for failing to behave in a civil and orderly manner in line with his conditions.

On 26 April 2007, as a result of the above and following a further complaint from a member of the public regarding his manner of driving, where Mr Z A G narrowly missed a collision with the complainant. Mr Z A G was issued a written warning. He was issued 9 licensing penalty points for, not behaving in a civil

and orderly manner, failing to wear his driver badge, failing to display dash display badge and for speeding (November 2006). A Letter to Mr Z A G was attached to the report.

On 21 December 2006, an officer issued Mr Z A G an Oral Warning because of his attitude towards the administration staff in the licensing unit. Mr Z A G was at reception to hand in paperwork for a transfer of ownership for his vehicle, he was apparently parked on double yellow lines, and was trying to rush administration staff to serve him, administration staff found him to be rude and demanding.

On 4 September 2007, a complaint was made against Mr Z A G, by a member of public, this was regarding his attitude on 3 October 2007 in Thornaby Town Centre Car Park. A disabled woman needed to park her vehicle in a disabled space within the town centre. Mr Z A G had parked his car in the disabled space in order to get his son to a doctor's appointment.

When asked if he was disabled Mr Z A G lied, said, "Yes", and then said he had left his disabled badges at home. These actions upset the disabled lady and resulted in her having to walk further than was necessary for her doctor's appointment, causing her discomfort.

A full statement was taken from the complainant and a copy this statement was attached to the report.

Mr Z A G was interviewed by Licensing Officers on 1 October 2007, where Mr Z A G admitted his mistake and apologised for parking in the disabled bay and for lying to the complainant. A transcript of this interview was attached to the report.

Members had regard for the report and attached appendices, copies of which had been given to Mr Z A G prior to the meeting; the Committee also listened carefully to what Mr Z A G and his representative, Mr Dave Walker, had to say with regard to the matters disclosed. This included the fact that Mr Z A G was apologetic for his behaviour.

Members deliberated over their decision as to whether they were satisfied at this time whether Mr Z A G was still a fit and proper person to hold a licence. Members felt that there were sufficient grounds under the legislation to revoke Mr Z A G's hackney carriage driver's licence as his behaviour had been totally unacceptable. Members outlined that holding a hackney carriage licence was a position of trust and holders of such licences were expected to be civil and orderly at all times. However, Members took in to account Mr Z A G's current personal circumstances and the fact that he was remorseful of his behaviour.

Members felt that on this occasion Mr Z A G be issued with a severe final warning as to his future conduct. Members hoped that Mr Z A G had learnt a valuable lesson from this. Members also advised Mr Z A G that he would be required to come before the Committee again in six months time. However, if any issues are brought to the attention of the Licensing Department within this six-month period then Mr Z A G will be brought immediately before the Committee where the Members would determine Mr Z A G's continued fitness to hold a licence.

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 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.

RESOLVED that:-

1. Mr Z A G be issued you with a severe final warning as to his future conduct.

2. Mr Z A G be advised that he will be required to come before the Committee again in six months time to determine Mr Z A G's continued fitness to hold a Licence.

3. If any issues are brought to the attention of the Licensing Department within this six-month period then Mr Z A G will be brought immediately before the Committee where the Members will determine his continued fitness to hold a licence.

**L
48/07** **Private Hire Driver Application - Mr SL**

Consideration was given to a report on an application from Mr S L for a Private Hire Drivers Licence.

Mr S L had made application to the Authority for a Private Hire drivers licence. A Copy of his application was attached to the report.

Mr S L as part of the application process filled out a Criminal Record Bureau disclosure application. This was returned to the Authority in due course and was available for members to inspect.

Two items that were disclosed and were deemed relevant, namely on 15 March 2005 the applicant was given a Conditional Discharge in relation to an Offence of 'Altering document with intent to deceive' this was in relation to an MOT Certificate of which the date had been altered in order to obtain a Road Fund Licence.

Secondly information relating to a Formal Caution for 'Handling Stolen Goods' this related to a motor vehicle he had purchased from a friend.

Also included on the form was information disclosed at the Chief Police Officers discretion. This related to the applicant being stopped in a motor vehicle in which a Martial Arts weapon was found along with three packets of Cannabis. One of the occupants admitted to possession of the weapon. But no charges or

action was taken in relation to the Cannabis as there was insufficient evidence to prove who it belonged to.

Mr S L was interviewed in relation to the Disclosure information and that record of interview was attached to the report. During the interview the Councils Relevance of Convictions document was referred to and the applicant was asked why the guidelines contained in the document should be ignored.

He responded and said "I understand it is an important document but would ask for the chance to prove I'm not a bad person". At the end of the interview he was asked if he had anything else to say in support of his application, he replied, " No, just that I need a chance to prove I will be a good driver".

Mr S L had passed the Driving Standards Test and he had successfully passed the Local Knowledge Test. This was part of the application process.

Members were reminded that under the provisions of Section 51 (1) (a) of the Local Government (Miscellaneous Provisions) Act 1976.

Subject to the provisions of this part of this act, a district council shall, on receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district council shall not grant a licence –

a. unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence.

Members decided to refuse Mr S L's application for the grant of a Private Hire drivers licence on the grounds that he was not considered to be a fit and proper person at this time because of his convictions. Members arrived at this decision after consideration of the report, a copy of which Mr S L had been provided with prior to the meeting, and to the representations made at the meeting by Mr S L and to the Councils guidance on the relevance of convictions.

Members considered Mr S L's conviction for dishonesty to be a serious offence and whilst Mr S L may apply for the grant of a licence at any time, Members indicated that he should demonstrate a further period of at least 12 months free from conviction before such an application would be considered.

RESOLVED that Mr S L's application for the grant of a Private Hire drivers licence be refused on the grounds that he was not considered to be a fit and proper person at this time because of his convictions.

**L
49/07**

Combined Driver - Mr M A S

Due to its urgent nature Members agreed that the following late item could be considered.

Consideration was given to a report which informed member's of a decision taken by officers, using delegated powers, to suspend a combined hackney carriage/private hire driver under Section 61(1)(2B) of the Local Government

(Miscellaneous Provisions) Act 1976 (As Amended) after he was charged by police for serious offences on 20th September 2007.

Mr M A S was a combined hackney carriage/private hire driver. He was first licensed on 17th October 2002. His current license expired on 31st October 2007.

On 20th September 2007 the Licensing Department were contacted by Stockton Police when they informed Officers that M A S had been arrested and charged that day with kidnap and three counts of sexual touching on a female passenger in his taxi.

Upon receipt of this information and because of the serious nature of the charges Mr M A S's Combined Drivers Licence was immediately suspended by Officers using delegated powers under Section 61(1)(2B) of the Local Government (Miscellaneous Provisions) Act 1976 (As Amended). A copy of the suspension letter was attached to the report.

Mr M A S had appealed against this decision and the matter would be heard in the Magistrates Court on 30 November 2007.

Normally this matter would be listed for consideration by this committee if the police charges resulted in a conviction. However; Mr M A S failed to renew his licence within the given timescale and therefore was no longer licensed by the Authority. Mr M A S had therefore been advised that he may apply for the fresh grant of a licence at any time when it would be considered on its merits by this committee.

Mr M A S, through his legal advisor had been advised the meeting but was not in attendance.

RESOLVED that the report be noted.