

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 12th August, 2008.

Present: Cllr Ken Dixon, Cllr Miss Tina Large, Cllr Mrs Ann McCoy, Cllr Maurice Perry, Cllr Roy Rix, Cllr Fred Salt, Cllr Steve Walmsley, Cllr Bill Woodhead

Officers: S Mills, M Vaines (DNS); M Jones, J Nertney (LD).

Also in attendance: Mr JCH - For Item 4, Mr AS, Mr AF - For Item 6

Apologies: Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Paul Kirton, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Kath Nelson

L Declarations of Interest

34/08

Cllr Roy Rix declared a prejudicial interest in Item 5, Combined Driver Mr MF, as he had previously made representation regarding this item, and stated he would leave the room when the item was considered.

L Exclusion of the Public

35/08

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.

L Private Hire Driver's Licence - Mr JCH

36/08

Consideration was given to a report on a licensed Private Hire Driver who had been convicted of failing to stop after an accident and failing to give name and address and after and accident.

Mr JCH was a licensed private hire driver with this authority and had been licensed since November 2003. His current licence was due to expire on 30 November 2008.

On the 10th April 2008, the licensing authority received notification from Mr JCH that on 25th March 2008, as a result of an accident on 21st December 2007, he had received 8 DVLA penalty points. This was confirmed by a disclosure from Cleveland Police on 29th May 2008, which showed that he had been convicted in Teesside magistrates Court on 25th March 2008 for:

- a. Failing to stop after an accident. For which he was fined £100, awarded £25 costs and had his driving licence endorsed.
- b. Failing to give name and address after an accident. For which his driving licence was endorsed.

Mr JCH was interviewed on 4th June 2008 regarding the incident. The interview revealed that Mr JCH was in the right hand lane at a roundabout ready to turn right, there were no vehicles to his left. Mr JCH looked to his right to check for on coming vehicles, at which time it seemed another vehicle changed lanes and

ended up in front of Mr JCH. As Mr JCH pulled forward, he collided with the other vehicle. The incident occurred at around 08.30am. Both drivers pulled to the side of the road. Mr JCH admitted that neither driver seemed willing to offer their details first. During interview, Mr JCH informed the licensing authority that he advised the other driver to contact Boro Cars office and that they would deal with it. Boro cars were a licensed Private Hire Operator with this authority and employed Mr JCH. Mr JCH advised officers during interview that he then left the scene, as things were getting heated and he wished to avoid an altercation of any type with the other driver.

Mr JCH stated that he now realised, though he did report this incident to the Boro Cars office, he should have reported this incident to the police. When Boro Cars did not hear from the other party they assumed this had been forgotten about, as there was only minor damage to both vehicles. A summary of the transcript of the interview was attached to the report.

No previous complaints had been received regarding Mr JCH and he had also not received any other DVLA points during his time as a Private Hire Driver.

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 had 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 are also advised of the revisions to Section 61 introduced under the Road Safety Act 2006 as follows:

(2a) Subject to subsection (2b) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end of the period of 21 days beginning with the day on which the notice is given to the driver under subsection (2)(a) of this section

(2b) If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under subsection (2)(a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver.

A copy of the adopted guidelines relating to the Relevance of convictions was attached to the report for Member's information.

Mr JCH was in attendance at the meeting and was given the opportunity to state his case.

Members had full had regard to the report presented, a copy of which Mr JCH had received prior to the meeting; the Committee also listened carefully to what Mr JCH had to say with regard to the matters disclosed. This included the fact that Mr JCH was apologetic with regard to what happened.

After taking all the evidence into account the Members allowed Mr JCH to keep his licence and issue Mr JCH with a final written warning as to his future conduct. The Members hoped that Mr JCH had learnt a valuable lesson from this incident.

A copy of this letter would remain on Mr JCH's drivers file and may be referred to in the future.

RESOLVED that Mr JCH be issued with a final written warning as to his future conduct

**L
37/08**

Combined Driver - MR M.F.

Members were informed that Mr MF had been invited to the meeting but was not in attendance. Mr MF's brother, who was at the Committee Chambers for another matter, indicated that he had sent a letter to the Legal Advisor to the Committee. However, this letter had not been received.

As it was not known whether the letter related to Mr MF's non-attendance at the meeting the Members felt it was in the interest of Natural Justice to defer this report to the next meeting to allow Mr MF the opportunity to attend. If Mr MF did not attend the next meeting the matter may be heard in his absence.

RESOLVED that the item be deferred.

**L
38/08**

Private Hire Operator Licence - TV

Consideration was given to a report regarding a Private Hire Operator application. The application was to allow the continuation of a business where the previous Operators Licence was revoked by the Committee and when it was absolved that any new application which would use the same premises would be determined by this Committee.

At the Licensing Committee meeting held on 23 November 2007, which was reconvened from 23 October 2007, Members revoked the Private Hire Operators Licence held by Mr MF T/A TV Ltd. A copy of minute 41/07 which refers was attached to the report.

Mr MF appealed the decision to the Teesside Magistrates when the Council's decision was upheld. He subsequently appealed to the Crown Court and at the hearing held on 17 July 2008 the Judge Mr Bowers, having been made aware of Mr AS application to put the Private Hire Operators into his name which would allow the continuation of the business, adjourned the appeal hearing to the 18 August 2008, to allow the Council the opportunity to consider the application.

Members were advised that during the appeal process Mr MF had been able to continue his private hire business.

Mr AS was the younger of four brothers who had been involved and had responsibility in some form or another for the running of the Company since they became involved in the trade in the Stockton area over 18 years ago, buying their first company County Cars from a previous operator just over 14 years ago.

TV had evolved through the buying of smaller companies over the years into the company that it was today. Mr MF was the elder of the four brothers and was seen as the leader in building the company up to be one of the largest in the area.

The second eldest brother Mr MZ who was identified as being the Administration Director of the Company under the new structure, was licensed as a driver with this council until his licence was revoked by this Committee as he was found not to be a 'fit and proper' person on 10 January 2006. Minute reference 949 refers and was attached to the report.

The third brother Mr MM identified as being the Taxi Operations Director within the new structure was licensed by the licensing authority but his licence expired on 31 August 2006 and he failed to renew. He was currently licensed with Hambleton Council as a driver.

An application for a Private Hire Operators licence had been received from Mr AS on behalf of TV Ltd on 20th June 2008 to operate 27 vehicles from 8 Yarm Lane Stockton-on-Tees.

During a meeting/interview on Wednesday 30th July 2008 in relation to this application Mr AS was asked a number of questions regarding his understanding of the general terms and conditions of an Operators Licence. Apart from a slight misunderstanding on one of the questions, he answered adequately the questions put to him. Copy of the Guidance Notes used were attached to the report

Mr AS had declared on the operators licence application form that Mr MZ was the Company Secretary, and Mr MF was a Director or Partner in the business. He stated at 'position held by applicant' that he was to be the Office Manager.

It transpired that Mr AS had been the Company Secretary since its inception, which was a matter he failed to declare on the application form. At the meeting/interview on Wednesday 30th July 2008 a number of documents were produced by Mr AS that had been requested at previous meetings. This included a Management Structure which was also attached to the report. The structure showed Mr AS to be the Managing Director with overall responsibility for the Company on a day to day basis regarding the provisions of running of a 'Taxi' service. He would also act as Chairman at meetings of the Directors. Also shown as the Administrative Director was Mr MZ who was shown as the person responsible in general for the Administration of licence applications and vehicle servicing and maintenance.

Mr MM was shown as the Taxi Operations Director, with responsibility for the Booking Office in relation to members of the public and the booking and dispatch operators. The Company Secretary was now shown as a Mr AF an independent Taxi and Private Hire Consultant, who was to ensure statutory

compliance by the Company and to advise on matters relating to licensing and the statutory requirements and Council requirements.

Officers noted on the sheet that the previous licence holder, Mr MF, resigned as Director of the Company on 28th July 2008 on health grounds, and would have no active role in the management or affairs of the Company, although he remained as a shareholder in the Company.

Mr AS, also produced a document titled 'Instructions to drivers and disciplinary notice' at the meeting. This document outlined to the drivers the way in which they should conduct themselves in relation to the collection of passengers from the office when the Road Closure was in place and also when it was not. Mr AS advised he was aware this was one of the previous problems associated with the Company and he hoped this would go some way to addressing the issue.

Mr AS also explained in detail the operation of the new booking and ticket system which would ensure unbooked fares were not picked up. Any customer attending the Swallow Hotel lay-by during the time of the Road Closure would be unable to get into a vehicle without a ticket issued by the office. This would include the customers name and destination. Also produced was an example of a Customer Complaint Form which would be filled in accordingly by the office staff upon receipt of a complaint. Copies are attached to the report.

A number of other questions were put to Mr AS in relation to some concerns the Council has had since it was identified that he had taken over the running of the Company on the 20th June 2008. A copy of these questions and the answers are attached to the report.

The applicant confirmed he had taken over responsibility of the Company with the help of family members, friends and legal advisors. The concerns of the Licensing Officer was a 'Test Purchase' that was carried out on 27th June 2008 where a un-booked fare was directed to the private hire vehicle by the 'Taxi Marshal' This was in effect the same offence for which the previous licence holder had been prosecuted.

Mr AS stated he was not aware of this and that the ticket machine was not in on that day. He was asked if the non installation of a ticket machine excused the event. He replied "No".

One of the questions related the employment of a driver who was twice convicted of Plying for Hire without the appropriate licence; also found to be driving a private hire vehicle under the influence of alcohol carrying members of the public; also found to be transporting school children in a PSV vehicle whilst unlicensed to do so. The latter offence was committed after his private hire drivers licence was suspended. He was recently found to be working for TV driving a Berwick Hackney Carriage vehicle. Mr AS indicated when he was made aware of the issues involving the driver that he terminated his employment with the company with immediate effect.

On the issue regarding out of town hackney carriages in general. Mr AS indicated he had received legal advice on this issue. When questioned further about the advice he received, he then informed he had not received anything in particular, but he intended to get rid of the vehicles when the drivers obtain

licences with Stockton Council.

Members were reminded that under the provisions of Section 55 (1) of the Local Government (Miscellaneous Provisions) Act 1976; the Council shall, on receipt of an application from any person for the grant to that person of a licence to operate private hire vehicles grant to that person an operators licence:

'Provided that a district council shall not grant a licence unless they are satisfied that the applicant is a fit and proper person to hold an operators licence'.

A copy of the relevance of convictions was attached to the report.

Mr AS and Mr AF were in attendance at the meeting and were given the opportunity to state their case.

Members had full had regard to the report presented, a copy of which Mr AS had received prior to the meeting; the Members also listened carefully to what Mr AS and Mr AF had to say with regard to the matters disclosed. Members believed that the proposals put forward and detailed in the report as to how the company would operate were acceptable procedures for operating a Private Hire Company.

However, Members were advised that they had to decide whether Mr AS, as the applicant on behalf of TV Limited, were a fit and proper person to hold the Operators Licence. Members noted that Mr AS had signed a statutory declaration on the application form, which contained a lie, namely that Mr MZ was the Company Secretary. This was untrue as Mr AS was the Company Secretary and had been since the company was formed in July 2005. Whilst the Members noted the comments that owing to ill health in 2005 Mr AS had resigned as Company Secretary there was no evidence to this effect. Members had regard to a recent company search, which showed that Mr AS was the Company Secretary and had been since 7th July 2005. Members felt that making a statutory declaration that was untrue was a serious matter and cast doubt on Mr AS character and fitness. This demonstrated at the least an irresponsible attitude to completing paperwork and a total misunderstanding of his role and responsibilities in relation to TV Ltd since 2005.

Members noted that Mr AS took over management of the company on 20th June and yet despite this on 27th June 2008 a further successful test purchase took place when a driver employed by TV Ltd picked up Council Officers illegally i.e. plyed for hire without a licence. This was one of the main issues which had led to the revocation of the previous Private Hire Operators licence and was therefore a matter of grave concern to Members. Mr AS explanation for this was that the ticket machine, which was part of his improved procedures, had not yet been installed. Members would have expected Mr AS to exercise even more diligence when he took over control of the company following the revocation of the previous Operators Licence. However this was sadly not the case and a further test purchase had occurred. It was noted that Mr AS informed Members that the driver of the vehicle who plyed for hire on 27th June had received a formal written warning in relation to that incident. However the incident was not solely the responsibility of the driver as another TV employee, namely the taxi marshall, had actually instructed the test purchasers to enter the vehicle.

Members also noted that even though Mr AS had been Company Secretary since 7th July 2005 to July 2008 he stated that he had no knowledge of any of the disciplinary issues and complaints involving the company over the last three years. Members found it hard to believe that Mr AS had no knowledge of the problems caused by the company and the prosecutions against their drivers. This was considered more unbelievable given the close family relationship between Mr AS and his brothers and the fact that he lived in the same household as two of them and also worked at the company premises.

Members noted that since the formation of the company in 2005 Mr AS and Mr MF were the major shareholders in the company and that on the recent restructure Mr AS and his three brothers each held 25% of the shares in the company. Members were of the view that, notwithstanding the improved procedures submitted by Mr AS in documentation, there appeared to be little change in the Company structure given that his brothers each owned 25% of the shares. Two of these brothers had previously been deemed to be not fit and proper to hold a licence under taxi legislation.

Taking into account the concerns over Mr AS misunderstandings of his role and responsibilities and the concerns over the truthfulness of Mr AS evidence, Members had no faith in his ability to be a licensed operator. Accordingly Members resolved to refuse the application under the provision of Section 55 (1) of the above-mentioned legislation on the grounds that Mr AS was not considered a fit and proper person to hold an operators licence.

RESOLVED that the application be refused on the grounds that Mr AS was not considered a fit and proper person to hold an operators licence.