

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 23rd September, 2008.

Present: Cllr Bill Woodhead (Chairman), Cllr Mrs Eileen Craggs, Cllr Ken Dixon, Cllr Paul Kirton, Cllr Miss Tina Large, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Maurice Perry, Cllr Roy Rix, Cllr Fred Salt, Cllr Steve Walmsley,

Officers: C. Barnes, P. Edwards, M. Vaines (DNS), J. Nertney, M. Jones (LD)

Also in attendance: Mr JRF - for Item 4, Mr S. M. H. - For Item 5, Mr S. L., For Item 6, Mr B. S., Mr B. S. - For Item 7, Mr A. S. - For Item 8, Mr M Y - For Item 9, Mr A F. - For Item 4 & 8

Apologies: Cllr Dick Cains, Cllr Mrs Ann McCoy, Cllr Mrs Kath Nelson

L Declarations of Interest

39/08

Cllr Roy Rix declared a prejudicial interest in Item 10, 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 Minutes

40/08

The minutes of the meeting held on 1st July 2008 were signed by the Chairman as a correct record.

L Exclusion of the Public

41/08

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 Operator - Mr J R F

42/08

Members of the Committee were informed that correspondence had been received by the Licensing Officer and Legal Advisor from MR JRF's legal representative, which notified that they were unable to attend and requested that consideration of the application be deferred to the next meeting.

Mr JRF and Mr AF who were in attendance at the meeting, agreed with the request that consideration of the application be deferred.

Members felt it was in the interest of Natural Justice to defer this report to the next meeting. The next Committee meeting was due to be held on 4th November, and members agreed that an additional meeting be arranged in October 2008 to ensure that consideration of the application was not unnecessarily delayed.

RESOLVED that:-

1. The application be deferred to the next meeting of the Committee.
2. A Licensing Committee meeting be arranged for October 2008.

**L
43/08**

Combined Driver - Mr S.M.H.

Consideration was given to a report regarding a licensed hackney carriage and private hire driver who had been convicted for plying for hire and using a vehicle uninsured against third party risks, following a prosecution by Middlesbrough Council.

Mr SMH was a licensed hackney carriage and private hire driver. Mr SMH had been a licensed driver since January 2005 and his licence expired on 31 January 2009.

On 21st February 2008, a notification of a Motoring Conviction was received from Mr SMH regarding an offence, which he committed in October 2007. Mr SMH was interviewed by Officers to establish the details.

During interview, Mr SMH explained that, on the night of 28 October 2007, he was on a booked job to drop in Middlesbrough. While his passenger was sorting her money, a male approached his vehicle wanting to be taken to Redcar. Mr SMH refused. The male persisted and Mr SMH refused again, the male said he felt unwell, was cold and had an interview in the morning and needed to get home. Mr SMH told Officers he felt sorry for the male and that he agreed to take him. He advised, during interview, he had allowed the male in to the vehicle and then passed him a business card asking him to call Royal Cars and add the job to the system. Mr SMH then pulled away from the roadside.

Middlesbrough Council Licensing Officers and Cleveland Police had witnessed these events. The police then stopped Mr SMH and a Council Officer interviewed him.

When asked by Stockton Officers during interview if he was prosecuted for plying for hire Mr SMH said he was not and that it was only the no insurance that he was prosecuted for.

However, an email received from the Middlesbrough Council Licensing Officer on 01-08-08 confirmed Mr SMH had pleaded guilty, at court, to plying for hire and no insurance on 13 February 2008 and was given a £300 fine and six penalty points and awarded £249.49 in costs.

During his period as a licensed driver records showed that, in July 2006, Mr SMH was given a written warning for his conduct when he and a customer had a dispute over the fare and he refused to let the customer out of the vehicle.

In June 2007, Mr SMH took a mobile phone from a customer in payment for soiling the car. The customer complained to the licensing department and Mr SMH was advised to return the phone and make a civil claim for the damage to vehicle.

In January 2008, Mr SMH was spoken to regarding an allegation of speeding on Yarm Road for which he received an oral warning.

In April 2008, Mr SMH was given a written warning and 3 licensing penalty points for his standard of driving, following a further complaint by a member of

the public.

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.

Members were 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.

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

Members had full had regard to the report presented, a copy of which Mr SMH had received prior to the meeting; the Committee also listened carefully to what Mr SMH had to say with regard to the matters disclosed. This included the fact that Mr SMH admitted that he was wrong in his actions to accept an unbooked fare in Middlesbrough, and that he had been prosecuted for Plying for Hire and No Insurance as a result of trying to help a customer.

The Committee had regard to Mr SMH remorse for this incident and the explanation, which he presented in that he had been naive in this instance, and believed a customer and allowed him in to his vehicle without a prior booking in place. Mr SMH confirmed he had learnt from this mistake and that he would never repeat these actions. The Committee noted the legal advice from their adviser that they must not go behind the conviction and consider the circumstances and that they should consider the conviction itself.

After giving due consideration to the report the Committee considered Mr SMH's disciplinary record appalling and were minded to revoke his licence. However, they decided to give him one last chance and to issue a final, severe warning as to his future conduct.

A copy of the letter would be placed on Mr SMH's driver file and would be referred to should any future complaints or convictions be brought to the attention of the Council, when he would be referred back to the Licensing Committee. Mr SMH was advised that if he failed to take notice of this final warning and that should he commit any further offences or receive further complaints regarding his fitness then revocation of his licence was likely.

RESOLVED that Mr SMH be issued with a final, severe warning as to his future conduct.

**L
44/08**

Application For A Private Hire Drivers Licence - Mr S.L.

Consideration was given to a report regarding a new application for a Private Hire Drivers Licence received from Mr SL who had a previous application refused by this Committee in November 2007, because of convictions for dishonesty, and when he was advised to demonstrate a period of 12 months free from further conviction.

Members were reminded that Mr SL made an application for a Private Hire drivers licence in July 2007. In November 2007 Mr SL attended a Committee meeting, when it was decided to refuse his licence until he had shown a further 12 months free from Conviction / Caution because he was not considered to be a fit and proper person at that time due to his convictions.

Mr SL had completed a further Criminal Record Bureau Disclosure Application. This was returned in July 2008. The same convictions had been disclosed as previous. Firstly, 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', which related to a motor vehicle he had purchased from a friend. A copy of the disclosure was available at the meeting.

Mr SL had passed the Driving Standards Taxi Driving Test, which was part of the application process. Mr SL passed his Private Hire knowledge test in July 2007.

It was known that Mr SL had been granted a Hackney Carriage Drivers Licence with Berwick upon Tweed Council with a Warning, due to the findings on his CRB. The licence was issued on 13th July 2008.

Mr SL had been advised that officially nothing had changed and that the 12-month period he had to demonstrate being free from further conviction did not expire until 27 November 2008. Despite this, he requested that the Committee consider his new application at this time.

Members were respectfully reminded that under the provisions of section 51(1)(a) of the Local Government (Miscellaneous Provision) Act 1976, District Councils were instructed not to grant a licence to drive private hire vehicles, unless they were satisfied that the applicant was a fit and proper person to hold such a licence.

Mr SL 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 SL had received prior to the meeting; the Committee also listened carefully to what Mr SL had to say with regard to the matters disclosed.

Members decided to refuse Mr SL's application for the grant of a Private Hire drivers licence on the grounds that they did not considered him to be a fit and proper person at this time because of his convictions. Members noted that when Mr SL's previous application was refused he was advised to wait a further 12 months before reapplying, ending 27 November 2008. Members considered that the letter sent to Mr SL previously was quite clear in advising him to demonstrate 12 months free from further conviction following the last meeting. Mr SL was advised to resubmit his application on or after 28 November 2008 so that the Committee could see a full 12 months free from further conviction, on his CRB, since their original request in November 2007.

RESOLVED that the application be refused on the grounds that Mr SL was not considered a fit and proper person to hold a private hire drivers licence.

L
45/08 **Application For A Private Hire Drivers Licence - Mr B.S.**

Consideration was given to a report regarding an application for a private hire driver's licence from an applicant who had a 56-day disqualification, from driving, in September 2006.

Mr BS had submitted an application to become a licensed private hire driver with this authority. His application included his DVLA licence, which showed a disqualification for an SP30 (exceeding statutory speed limit on a public road).

Mr BS was interviewed regarding this conviction when he stated that the offence took place on the A66, heading westbound. Mr BS was travelling at around 90mph when he was pulled over by traffic police. His DVLA licence stated that in September 2006, he was convicted in Court, issued a 56-day disqualification and a £100 fine, for the speeding offence he committed in July 2006. Mr BS received no penalty points on his licence.

During the interview with Officers, Mr BS explained his reasons for speeding. He advised he was on a curfew from his parents and had taken his friend home to Middlesbrough. He was conscious of the time and needed to be back before his parents returned home.

Mr BS stated he was very sorry for his actions and advised he had most definitely learnt his lesson. Mr BS used to work for his fathers restaurant but that had to close due to business being slow and now Mr BS wished to drive a private hire vehicle, initially for Teesside Cars.

Members were respectfully reminded that under the provisions of section 51(1)(a) of the Local Government (Miscellaneous Provision) Act 1976 District Councils were instructed not to grant a licence to drive private hire vehicles unless they were satisfied that the applicant was a fit and proper person to hold

such a licence.

A copy of the Council Guidelines on the Relevance of Convictions was attached to the report for Members information.

Mr BS was in attendance at the meeting and had the opportunity to state his case.

Members had full regard to the report presented, a copy of which Mr BS had received prior to the meeting; the Members also listened carefully to what Mr BS had to say with regard to the application.

Members noted that Mr BS had a previous 56-day DVLA driving ban two years ago. Under the Council's guidelines in respect of the Relevance of Convictions it was advised an applicant must show three years free from conviction. However, on this occasion Members decided to go outside the Council's guidelines and to put their trust in Mr BS. Therefore Members granted Mr BS a Private Hire Drivers Licence, with a Warning as to his future conduct. Members considered convictions for speeding to be serious and as a licensed driver the Council expected Mr BS to demonstrate a high standard of driving at all times.

A warning letter would therefore remain on Mr BS file and would be referred to should any future complaint or disciplinary matter come to the attention of the Licensing Unit.

RESOLVED that:-

1. Mr BS's application for a Private Hire Driver be granted.
2. A copy of the warning letter to remain on file and be referred to should any future complaint or disciplinary matter come to the attention of the Licensing Unit.

**L
46/08**

Private Hire Driver - Mr A S

Members of the Committee were informed that correspondence had been received by the Licensing Officer and Legal Advisor from MR AS's legal representative, which notified that due to personal reason they were unable to attend and requested that consideration of the application be deferred to the next meeting.

Mr AS and Mr AF who were in attendance at the meeting, also requested that consideration of the application be deferred.

Members felt it was in the interest of Natural Justice to defer this report to the next meeting.

RESOLVED that the application be deferred to the next meeting of the Committee.

**L
47/08**

Hackney Carriage Driver - Mr M Y

Members of the Committee were informed that correspondence had been

received by the Legal Advisor of the Committee from Mr MY's legal representative, which notified that they were unable to attend and requested that consideration of the application be deferred to the next meeting.

Mr MY was in attendance at the meeting and agreed with the request for consideration of the application to be deferred.

Members felt it was in the interest of Natural Justice to defer this report to the next meeting.

RESOLVED that the application be deferred to the next meeting of the Committee.

**L
48/08**

Combined Driver - MR M.F.

Cllr Roy Rix declared a prejudicial interest in Item 10, Combined Driver Mr MF, as he had previously made representation regarding this item, and left the room.

A letter from Mr MF dated 22 September 2008, advising that he wished to surrender his licence, was put before the Committee. Members were also advised of the comments made by Mr Fidler in his email of 22 September 2008 to the Council's Principal Solicitor, Mr Nertney, when he confirmed that Mr MF would not be attending the meeting and was content for the Committee to proceed in your absence.

Members decided to proceed in Mr MF absence and after giving due consideration to Mr MF's letter decided not to accept his offer to surrender his private hire and hackney carriage drivers licence. The Committee were mindful that Mr MF could choose to re-apply for his licence at anytime and owing to the serious nature of the matters contained in the report they felt it appropriate to proceed to consider the issues and make a decision.

The Committee considered that Mr MF's convictions on 23 May 2008 for soliciting persons to hire vehicles; employing an unlicensed hackney carriage driver; permitting the use of an uninsured vehicle; failing to comply with a request to produce private hire bookings and making a false statement to an authorised officer were sufficient reasonable grounds to revoke his private hire and hackney carriage drivers licence on their own. A further matter of concern was Mr MF's recent medical history provided to the Crown Court in that he was suffering from stress, depression and having suicidal thoughts which required him to take a great deal of medication. The symptoms of Mr MF current medical condition led the Members to resolve that this was a matter of public safety and therefore his revocation would be with immediate effect and he was therefore no longer authorised to drive such vehicles.

RESOLVED that:-

1. Mr MF's Private Hire Drivers Licence be revoked as Mr MF is not a fit and proper person to hold such a Licence.
2. As the revocation was on the grounds of public safety the revocation take immediate effect under the provisions of Section 61(2)(B) The Local Government (Miscellaneous Provisions) Act 1976.

