

Licensing Committee

A meeting of Licensing Committee was held on Monday, 20th October, 2008.

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

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

Also in attendance: Mr MY, Mr JN - For Item 3, Mr AF - For Items 4, 5, and 6, Mr ASc - For Items 4 and 5, Mr JRF - For Item 5, Mr AS - For Item 6

Apologies: Cllr Dick Cains, Cllr Mrs Ann McCoy

L Declarations of Interest

51/08

There were no interests declared at the meeting.

L Hackney Carriage and Private Hire Licensing Policy Review

52/08

The Principal Licensing Officer noted the Hackney Carriage and Private Hire Licensing Policy document that members reviewed at the meeting held on 13th October 2008. Approval was sought from the committee to defer any applications for a new and/or replacement vehicle licence to after the new policy had been approved .

RESOLVED that applications for new and /or replacement vehicles be deferred until the new policy had been ratified.

L Exclusion of the Public

53/08

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 Application For A Private Hire Operators Licence - Mr A F

54/08

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Licence which was in effect an application to allow the continuation of a business where the previous Operators Licence was revoked by this Committee and when it was resolved that any new application which would use the same premises would be determined by this Committee.

At the Licensing Committee meeting held on 23rd November 2007 Members revoked the Private Hire Operators Licence held by Mr MF of TV. Mr MF appealed this decision to the Teesside Magistrates Court when the Council decision was upheld. He subsequently appealed to the Crown Court and Members were advised at the meeting held on 12th August 2008, that the Court hearing was adjourned by Judge Bowers to allow this Committee the opportunity of considering a new application from Mr AS on behalf of TV.

Members were respectfully reminded that at this meeting Mr AS application was

refused on the grounds that he was not considered to be a fit and proper person to hold an Operators Licence. Following this decision Mr MF abandoned his appeal in the Crown Court on 18th August 2008.

Prior to the Crown Court hearing a letter was received from Mr JRF, the licensed Private Hire Operator T/A BC of Yarm, notifying the Council that his business had amalgamated with TV and that he would be operating out of 8 Yarm Lane, Stockton-on-Tees.

Following investigations into this merger it had been considered by Officers that the changes to Mr JRF licence constituted a material change and his Operators Licence was suspended and this matter was subject to a separate report to this Committee. Letters were sent by Mr JRF and TV advising them of this decision and inviting the "new company" to make arrangements to submit a new application for the grant of a new Private Hire Operator Licence, when it would be considered on its merits.

An application for a Private Hire Operators Licence had been received from Mr AF on behalf of TV to operate 32 vehicles from 8 Yarm Lane, Stockton-on-Tees.

Details of a proposed revised management structure for TV had been received from Solicitors representing the Company. This showed that two Directors would resign, leaving one sole Director and Mr AF as Company Secretary, and that the two previous Directors would have responsibilities for non-regulatory aspects of the business only. In addition a shareholders agreement had been signed giving Mr AF sole control and unfettered discretion to deal with all matters relating to the regulatory and compliance aspects of TV, including all licensing and legal matters.

Mr AF had forwarded his resume and Members were also advised that Officers had interviewed Mr AF, when he demonstrated more than an adequate knowledge of the licence requirements expected of a Private Hire Operator. He also advised Officers that he did not intend to work full time in Stockton but would be in attendance at the offices at 8 Yarm Lane on most days and could be contacted by telephone and e-mail, when not at the office.

Members were reminded that under the provisions of Section 55(1) 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.'

Mr AF was in attendance at the meeting with his legal representative, Mr ASc, and was given the opportunity to state his case. Mr AF noted his good character, his knowledge of Private Hire Licensing issues, his cooperation with Officers since being involved in TV, and how he had resolved issues with the company. MR AF noted that if he was prevented from Operating TV by the shareholders as he saw fit, he would resign and surrender the Private Hire Operators Licence.

After considering the report and Mr AF's representation at the meeting, Members considered that Mr AF was a fit and proper person to hold a Private Hire Operators Licence.

RESOLVED that Mr AF application for a Private Hire Operators Licence be granted.

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55/08 **Private Hire Operator - Mr J R F**

Mr JRF, who was in attendance with his representative Mr AF, stated that he had resigned as Operator of TV and voluntarily surrendered his Private Hire Operators Licence. Mr JRF resignation was tabled for members information. He stated that he would also withdraw his appeal against the suspension of this licence.

RESOLVED that the information be noted.

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56/08 **Private Hire Driver - Mr A S**

Members considered a report regarding the determination of the continued fitness of Private Hire Driver who recently applied for a Private Hire Operators Licence but his application was refused because this Committee found him not to be a fit and proper person to hold a Private Hire Operators Licence.

Mr AS was a Licensed Private Hire Driver and had been since 1993, badge number 479. His licence was due to expire on 31st May 2009.

At the meeting of the 12th August 2008 Members considered a Private Hire Operator application from Mr AS. Members found that Mr AS was not a fit and proper person to hold a Private Hire Operator Licence and refused his application.

As a result of this decision Members were asked to determine whether or not this decision had any impact on Mr AS continued fitness and suitability to drive Private Hire Vehicles with this Authority.

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.

Mr AS was in attendance at the meeting with his representative, Mr AF, and was given an opportunity to state his case. Mr AS informed Members that he would

be withdrawing his appeal against the previous decision of the committee not to grant him a Private Hire Operators licence from the Magistrates court.

Members considered the report and Mr AS representation, and agreed that the decision not to grant Mr AS a Private Hire Operators Licence did not impact on Mr AS being considered a fit and proper person to hold a Private Hire Drivers Licence.

RESOLVED that the previous decision to refuse an application for a Private Hire Operators Licence would have no impact on Mr AS continued fitness to hold a private hire driver's licence with this Council.

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57/08**

Hackney Carriage Driver - Mr M Y

Consideration was given to a report regarding the continued fitness of a Hackney Carriage Driver following the discovery of a large amount of Alcohol, Non Duty Paid Cigarettes and Kamagra Tablets in his Hackney Carriage vehicle.

Mr MY was a licensed Hackney Carriage Driver and had been licensed since December 2008. His badge number was 217 and his licence was due to expire on 31st December 2008.

The council were made aware at the end of May by other licensed Hackney Drivers in the Billingham area that a hackney carriage driver was supplying alcohol from the back of his vehicle on demand to his customers. Initial enquiries were made to ascertain the individual concerned, but enquiries drew a blank.

During a search of Mr MY's vehicle by the police it was alleged that a quantity of Alcohol was found in the boot of the vehicle an approximate amount being 5 cases of Lager, 2 cases of Beer, 1 case Cider, 1 bottle Whiskey, 2 bottles of Wine, 3 bottles of Vodka and one box of WKD which was an Alcopop. This was accompanied by 10 sleeves of 200 hundred non duty paid cigarettes and 40-50 Kamagra Tablets. These amounts were approximate and Mr MY had indicated slightly different amounts in relation to the cans of beer and lager.

It was explained that Kamagra Tablets were an unlicensed generic Viagra type tablet for the treatment of 'erectile dysfunction' manufactured in the Indian Sub-Continent by a company called Ajanti Pharmaceuticals. Under the Medicines Act 1968 it was illegal to possess for sale or distribute an unlicensed medication in the U.K.

Mr MY was initially suspended from driving following information given in relation to his arrest for the alleged possession with intent supply offence. On Monday 7th July an officer had attended Mr MY's home address to hand deliver a letter of suspension. During the meeting the issue regarding the Alcohol was discussed and Mr MY informed the officer that he had done this, but did not think he was doing anything wrong. He was advised he would need to be formerly interviewed regarding this at a later date. The allegation regarding the drugs was felt to be a more important issue. Mr MY successfully appealed against the suspension to the Magistrates Court on 20th August 2008 and was given his Hackney Carriage Drivers licence back by the court.

Mr MY was invited to attend for an interview in relation to the alcohol, cigarettes and the Kamagra tablets that were found in his vehicle. He attended for an interview on Thursday 4 September 2008 with his Legal Representative. Prior to the interview being undertaken his Legal Representative enquired in relation to the purpose of the interview and asked what was found in the vehicle. A list of the goods was given to him, he requested time with his client before the interview commenced. This was given and some 30-40 minutes later the Interview took place.

Once the formalities at the beginning of the interview were concluded Mr Fowler produced a written statement on behalf of his client. This was available at the meeting for members information.

The interview continued and in general terms Mr MY was wholly unhelpful and refused to answer the majority of the questions put to him, save from him replying 'No comment' or Mr Fowler advising him not to answer the question.

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.

and Section 61(2)

(A) 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 notice is given to the driver under subsection (2)(a) of this section

(B) If it appears in 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 MY was present at the meeting with his legal representative, Mr JM, and was given an opportunity to present his case. Mr MY and Mr JM stated that the Kamagra tablets were for Mr MY's personal use, which was not illegal, and were kept in his car as he did not want to leave them at his home. It was stated that the cigarettes in his car were also for personal use, bought by a friend that had been abroad. Mr MY informed that he had been buying alcohol and delivering this to the homes of people he knew as a favour, however he was not aware that he was doing wrong at the time and had since stopped this activity.

Reference was made to Mr MY's interview under caution with Licensing Officers, in which officers asserted Mr MY to be uncooperative. Mr JM stated that as Mr MY was under caution, he had a right not to respond to questions.

Members expressed their concern that Mr MY had been delivering alcohol, and this had been in the boot of his car when carrying paying passengers, and were minded to revoke his licence. However, members noted that MY MY had stated he had stopped delivering alcohol, and that he had not been convicted of selling the items found in his car.

The Committee would not condone Mr MY's actions and should Mr MY receive any further cautions, convictions or fail to comply with the conditions of his licence then Mr MY's continued fitness to hold a Hackney Carriage and Private Hire Driver's licence would be reconsidered by them when this final severe warning would be revisited.

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