

# Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 14th April, 2009.

**Present:** Cllr Bill Woodhead (Chairman), Cllr Jim Beall, Cllr Paul Kirton, Cllr Miss Tina Large, Cllr Colin Leckonby, Cllr Alan Lewis, Cllr Mrs Ann McCoy, Cllr Mrs Kath Nelson, Cllr Maurice Perry, Cllr Roy Rix and Cllr Fred Salt.

**Officers:** M. Vaines, P. Edwards, S. Mills (DNS) J. Nertney, M. Jones (LD)

**Also in attendance:** Annabel Turpin (Chief Executive of Arc) for item 5, Mr MPN and Mrs LN for item 7, Mr AL for item 8, Mr SL for item 9, Mr MPH for item 10.

**Apologies:** Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Ken Dixon

## **L       Declarations of Interest**

**1/09**

Councillor Paul Kirton declared a personal/prejudicial interest in item 7 - Mr MPN due being a member of the Police Authority's Complaint Committee that had had an involvement in the case. Councillor Kirton left the meeting when the item was considered.

Councillor Tina Large declared a personal/prejudicial interest in item 7 - Mr MPN due to being an acquaintance of a person involved in the case and left the meeting when this item was considered.

## **L       Minutes**

**2/09**

The minutes of the meeting held on 20th January 2009 were signed by the Chairman as a correct record.

## **L       Minutes**

**3/09**

The minutes of the meeting held on 27th January 2009 were signed by the Chairman as a correct record.

## **L       Short Film Classification - The Arc**

**4/09**

Consideration was given to a report regarding a request from the Chief Executive of Arc to screen a mixture of local, national and international short films which would not have been classified by the British Board of Film Classification (BBFC) and to decide an alternative process of film classification for the films.

Arc, Dovecot Street, Stockton-on-Tees had the benefit of a premise licence issued under the Licensing Act 2003 which permitted the provision of regulated entertainment including the exhibition of films.

When a premise licence permits the exhibition of films the Licensing Act 2003 required a mandatory condition to be attached to the licence regarding the

admission of children under 18 to the exhibition as follows:

(1) The admission of children under 18 to the exhibition of any film shall be restricted in accordance with any classification and recommendation in respect of that film made by the BBFC or any other film classification body designated under Section 4 of the Video Recording Act 1984; and

(2) Notwithstanding the above condition a film may be exhibited and children under 18 may be admitted thereto if the permission of Stockton Borough Council is first obtained and any condition of such permission are complied with. For the purpose of this condition the venue operator must submit any film to the Council that intends to exhibit 28 days before it is proposed to show it.

A copy of the BBFC's guidelines on film certification, which was available to be downloaded from their website at [www.bbfc.co.uk](http://www.bbfc.co.uk), was made available for Members information.

The Chief Executive of Arc had contacted the Council and informed that they were hoping to introduce some short film screenings over the next few months, with each evening including a local, national and international short. The films would be approximately 10-30 minutes in length and would be selected approximately six weeks in advance.

At this time it was considered unlikely that the films would have been certified by the BBFC and when this was the case the Council's permission was required to allow the films to be exhibited and children under 18 to be admitted as per the mandatory licence condition mentioned.

Members were therefore asked to consider this request and to determine how they wish to proceed in providing such films with a classification. It was considered there were three alternatives:-

(a) The full committee view each film and determine a classification using BBFC guidelines.

(b) A sub-committee view each film and determine a classification using BBFC Guidelines.

(c) Officers and/or officers in consultation with your chairman and/or vice chair view each film and determine a classification.

The Chief Executive of Arc was in attendance and was given an opportunity to state her case. She explained that officers from Arc would view the films before being submitted to the Licensing Unit giving a brief description of the films. She also offered to give each film a certification as a guideline and aid to members.

RESOLVED that:-

1. Arc can show films that have not been given a BBFC classification.

2. Classification be determined by the Head of Community Protection in consultation with the Chairman and Vice Chairman.

**L  
5/09**      **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.

**L  
6/09**      **Private Hire Driver & Operator - MPN**

Consideration was given to a report regarding an application for the renewal of a Private Hire Driver licence from a driver, from a person who was also a Licensed Private Hire Operator, who during the term of his Private Hire Drivers licence was suspended with immediate effect after he was arrested and charged with serious criminal offences following an allegation to Police in October 2007. On the 4th April 2008 the Licensing Officer received a call from Mr MPN and he informed the Council that he was acquitted following the Prosecution offering no evidence against him.

Mr MPN was a Licensed Private Hire Operator with the authority and had been since July 2003 and his Private Hire Operators Licence was due to expire on 30th November 2009. Mr MPN had also been a licensed driver with the Authority since June 2003. His current licence expired in May 2008 and Mr MPN had applied to renew his drivers licence.

During the investigation Mr MPN was also arrested for further serious criminal offence following the complainant taking her own life. On the 31st March 2008 Mr MPN was released and it was formally recorded that No Further Action was taken in relation to that alleged offence.

Mr MPN also received a Police Caution on the 10th April 2008 for Cultivating Cannabis after Police found 20 Cannabis plants and heat lamps at Mr MPN's property. Notification from Cleveland Police also revealed that Mr MPN admitted to being an alcoholic and used Cannabis and Cocaine daily. Mr MPN was arrested on the 4th July 2008 for the offence of driving a motor vehicle with excess alcohol. On the 29th September 2008 the Licensing office received formal notification from Cleveland Police that no further action was being taken against Mr MPN for the offence of driving a motor vehicle with excess alcohol.

A further Criminal Record Bureau check (CRB) also revealed that on the 6th July 2007 Mr MPN was arrested following an alleged verbal argument in which Mr MPN assaulted his adult partner. During the Police interview Mr MPN claimed self defence. As the female complainant withdrew her complaint the Crown Prosecution service advised that there was insufficient evidence to proceed with the case.

Mr MPN was interviewed on the 8th June 2008 regarding these matters and during the interview denied being an alcoholic and also denied using drugs.

Mr MPN was asked to submit a further CRB check. This CRB was returned to Licensing office on 9th January 2009 and confirmed his previous convictions all of which the Licensing Department were aware of.

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.

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.

Members were also reminded that under the provisions of Section 62(1) of the Local Government (Miscellaneous Provisions) Act 1976 the Council may suspend or revoke, or (on application therefore under section 55 of this Act) refuse to renew an operator's licence on any of the following grounds:-

a. any offence under, or non-compliance with, the provisions of this Part of this Act;

b. any conduct on the part of the operator which appears to the council to render him unfit to hold an operator's licence;

c. any material change since the licence was granted in any of the circumstances of the operator on the basis of which the licence was granted ; or

d. any other reasonable cause.

A copy of the guidelines relating to the Relevance of convictions was available for members information.

Mr MPN was in attendance at the meeting and was given an opportunity to state his case. Mr MPN noted that the majority of information contained on his CRB check was hearsay and that he had disputed all of the allegations and had been acquitted before the Courts of the serious allegations and charges made against him. Mr MPN had not been convicted for offences which he had been accused of, with the exception of Cultivating Cannabis which he stated he accepted a caution for despite not being guilty as he believed it was not a serious issue. Mr MPN also stated that the cannabis was owned by his son but that he accepted

the caution as he wished to keep his son out of trouble as he was seeking employment at that time. Mr MPN stated that he was a respectable citizen who had built up a business and employed three members of staff, and had been operating well both before and after his suspension.

The Committee noted that there were two separate decisions they had to make, one involving Mr MPN's drivers licence which was currently suspended and one for Mr MPN'S operators licence. The Committee had regard to the reports and appendices and the evidence given by Mr MPN. When considering the decision the Committee had regard to the Councils guidelines on the relevance of convictions.

The Committee had regard to Mr MPN's caution for cultivation of cannabis. The Committee deemed this to be a serious offence as the cannabis was actually being cultivated. The Committee noted Mr MPN's explanation that he had accepted the caution, even though he alleged that the cannabis belonged to his son, and that he had done this as his son was wishing to apply to the Fire Brigade. Even if Mr MPN's version of events was true the Committee felt that this was an aggravating factor when considering Mr MPN's fitness as he had in effect lied to the Police and/or this could be construed as perverting the course of justice. It was noted that Mr MPN's son had not actually applied to join the Fire Brigade. In any event the Committee were not minded to go behind the conviction and therefore it was a matter of fact that Mr MPN had a caution for cultivation of cannabis.

The Committee also had concerns over Mr MPN's arrest for drink driving as the Licensing Officer had given evidence that when Mr MPN attended the Councils Licensing Office he smelled very strongly of alcohol. Mr MPN denied having a drink that morning, however the Police report stated that he had provided a positive sample of breath and was arrested for driving with excess alcohol. It was noted that following readings given at the Police Station Mr MPN was not charged and the Police took no further action.

The Committee were also concerned over the information contained on Mr MPN's CRB check which gave details of a history of domestic violence involving his ex partner. It was noted that Mr MPN stated that his ex partner had been responsible for incidents of domestic violence against him. It was a matter of concern to the Committee that allegations of domestic violence appear on Mr MPN's CRB check and they deemed these to be relevant when considering his fitness. The Committee did not make any findings in relation to the allegations of indecency involving his ex partner and noted the tragic circumstances which had occurred in relation to those incidents. The committee noted that Mr MPN's Private Hire Drivers Licence was currently suspended because of the allegations.

However taking into account Mr MPN's caution for cultivation of drugs the Committee were in no doubt that Mr MPN was not a fit and proper person to hold a private hire drivers licence and they agreed to revoke Mr MPN's licence under the grounds of "any other reasonable cause". The Committee agreed that as Mr MPN was found to have driven with excess alcohol and had a caution for cultivation of drugs that public safety was an issue and that the revocation takes place with immediate effect.

The Committee considered whether their findings in relation to Mr MPN's fitness to hold a licence to drive private hire vehicles also affected his ability to hold an Operators Licence. The Committee were of the view that there were different tests to be considered in relation to each of these licences and it did not automatically follow that Mr MPN's Operators licence should be revoked. The Committee noted that Mr MPN had operated his business for a number of years without complaint. The Committee therefore agreed to allow Mr MPN to keep his Operators licence as they were of the opinion that their findings in relation to his fitness to hold a drivers licence did not preclude him from holding an operators licence.

RESOLVED that:-

1. Mr MPN's Private Hire Driver licence be revoked under the grounds of "any other reasonable cause" as Mr MPN was found to have driven with excess alcohol and had a caution for cultivation of drugs and that public safety was an issue and that the revocation takes place with immediate effect.
2. Mr MPN be allowed to keep his Operators licence.

**L  
7/09**      **Application For Private Hire Driver - AL**

Consideration was given to a report regarding an application for a private hire driver's licence from an applicant who was previously refused a licence, by this Council, due to four Section 59 warnings on his CRB, for driving in an antisocial and careless manner.

Mr AL had submitted an application to become a licensed private hire driver with this authority. A copy of his application was available for Members information. Included in this was a copy of Mr AL's DVLA driver's licence, which showed he had no motoring convictions.

Mr AL attended this Committee on 20th May 2008, when Members refused his application because of Warnings for Anti Social use of a motor vehicle and advised him to wait a further 6 months before reapplying and to demonstrate himself free from any further convictions, cautions or warnings, when the Committee may then be minded to grant his private hire driving licence.

Mr AL had completed a further Criminal Record Bureau check which was returned clean with the previous Section 59 warnings no longer active.

A copy of the Councils guidance on the Relevance of Convictions was made available Members information.

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

Mr AL was in attendance and given the opportunity to state his case.

The Committee had full regard to the report presented, a copy of which Mr AL had received prior to the meeting. They also took into account what Mr AL had to say in relation to the matters in question.

The Committee had noted that Mr AL had previously received four Section 59 Warnings on his CRB Disclosure, all of which had now expired. Members decided to put their trust in Mr AL and to grant him a Private Hire Drivers Licence. However the Committee did state that this was with a warning as to his future conduct, as a licensed driver the Council expected Mr AL to demonstrate a high standard of driving at all times.

The warning letter would remain on Mr AL's file and would be referred to should any future complaint or disciplinary matter come to the attention of the Licensing Unit.

RESOLVED that Mr AL be granted a Private Hire Drivers Licence with a warning as to his future conduct.

**L  
8/09**      **Application For Private Hire Driver - SL**

Consideration was given to a report regarding the suitability of an applicant for a Private Hire Drivers Licence whose application was refused by this Committee in November 2007, due to convictions for dishonesty, and when he was advised to demonstrate a period of 12 months free from further conviction.

A new application for a Private Hire drivers licence had been received from Mr SL. In November 2007 Mr SL attended this Committee, when it was decided to refuse his licence until he had shown a further 12 months free from Conviction / Caution, taking him to November 2008, because Mr SL was not considered to be a fit and proper person at that time due to his convictions. Mr SL received a Conditional Discharge for '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, then Mr SL received a Formal Caution for 'Handling Stolen Goods' this related to a motor vehicle he had purchased from a friend.

Mr SL had completed a further Criminal Record Bureau Disclosure Application and this was returned in February 2009. No new convictions were disclosed. However, on 23rd February 2009 Mr SL advised the Stockton Licensing Office, in writing, that he had been convicted of driving whilst using a mobile phone, the incident occurred on 13th February 2009 and the Police Officer gave Mr SL a fine and 3 penalty points. Mr SL was remorseful of his behaviour and realised the seriousness of his actions by using a mobile phone whilst driving and assured Members that he was aware that this was unacceptable. MR SL assured Members he would not be so naive as to do this again.

Mr SL had 9 live penalty points on his DVLA licence due to the recent conviction. The original 6 points, both SP30 and issued for 'Exceeding statutory speed limit on a public road' would be off his licence in May 2009 and June 2009 respectively. Mr SL also advised Members that he was willing to undertake the Driver Improvement Scheme, at his own cost, if the Committee

were minded to grant his private hire drivers licence.

Mr SL had a Hackney Carriage Drivers Licence with Berwick upon Tweed Council. The licence was issued on 13th July 2008.

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 available for Members information.

Mr SL was in attendance at the meeting and given an opportunity to state his case. Mr SL explained to the committee that he had answered his mobile phone while driving as he thought it might be an emergency at home.

The Committee were of the view that use of a mobile phone while driving was dangerous and they considered this to be a serious matter. After due deliberation the members of the Committee found that Mr SL was not a fit and proper person at the time to hold a private hire drivers licence owing to his convictions and the fact that he received a further conviction even though he had a pending application for a licence. The members recommended that Mr SL demonstrated a further 12 months free from conviction before reapplying for a licence.

RESOLVED that the application be refused on the grounds that Mr SL was not considered to be a fit and proper person to hold Private Hire Driver Licence.

**L**  
**9/09**

#### **Private Hire Driver - MPH**

Members were informed that the Principal Licensing Officer had spoken to Mr MPH, who had failed to submit a Criminal Record Bureau (CRB) check. The Principal Licensing Officer informed that this was due to Mr MPH financial situation and he was now in a position, and had agreed to, submit his CRB check.

Members agreed to defer the consideration of this item until Mr MPH had submitted his CRB check.

RESOLVED that consideration of the report be deferred.