

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 26th May, 2009.

Present: Cllr Bill Woodhead (Chairman), Cllr Jim Beall, Cllr Dick Cains, Cllr Miss Tina Large, Cllr Alan Lewis, Cllr Maurice Perry, Cllr Roy Rix and Cllr Fred Salt.

Officers: C Barnes, P Edwards, L Maloney, M Vaines (DNS); T Harrison, J Nertney, R Phillips (LD).

Also in attendance: For agenda item 8 - Mr N M, Mr N M's representative Cllr Steve Walmsley; For agenda item 9 - Mr S B.

Apologies: Cllr Kath Nelson, Cllr Mrs Eileen Craggs, Cllr Paul Kirton, Cllr Colin Leckonby, Cllr Ann McCoy and Cllr Ken Dixon.

L Declarations of Interest

16/09

There were no interests declared.

L Minutes

17/09

Minutes of the meeting held on Tuesday, 3rd March, 2009 were signed by the Chairman as a correct record.

L Minutes

18/09

Minutes of the meeting held on Tuesday, 14th April, 2009 were signed by the Chairman as a correct record.

L Hackney Carriage & Private Hire Licensing - Delegation of Powers

19/09

Consideration was given to a report which proposed the delegation of certain decision making powers under the Town Police Clauses Act 1847 and The Local Government (Miscellaneous Provisions) Act 1976 to officers in consultation with the Chairman in determining applications for hackney carriage and/or private hire vehicle, driver and operator licences which did not comply with the provisions of the adopted Hackney Carriage and Private Hire Licensing Policy ("the Policy") which was agreed by Cabinet on 5 March 2009.

At the last meeting of the Licensing Committee held on 23 April 2009, Members considered applications for hackney carriage licences in respect of vehicles that did not meet the specifications laid down in the Hackney Carriage and Private Hire Licensing Policy that had been agreed by Cabinet on 5 March 2009.

During the meeting it was proposed that as the policy had now been agreed it was considered appropriate that officers in consultation with the Chairman could determine any future applications that did not comply with the policy specification on their individual merits.

However following legal advice it was considered that such a proposal would require a formal revision to the Scheme of Delegations under the Town Police Clauses Act 1847 and The Local Government (Miscellaneous Provisions) Act 1976 and it was proposed therefore that Members determine whether to delegate authority to refuse the following types of applications, when they do not

comply with the Policy, to Officers in consultation with the Chairman:-

(i) Applications for hackney carriage licences under Section 37 The Town Police Clauses Act 1847 ;

(ii) Applications for private hire vehicle licences under Section 48 The Local Government (Miscellaneous Provisions) Act 1976;

(iii) Applications for private hire operator licences under Section 55 The Local Government (Miscellaneous Provisions) Act 1976 ;

(iv) Applications for a licence to drive hackney carriages under Section 46 The Town Police Clauses Act 1847;

(v) Applications for a licence to drive private hire vehicles under Section 51 The Local Government (Miscellaneous Provisions) Act 1976.

RESOLVED that delegated authority be given to the Corporate Director of Development and Neighbourhood Services in consultation with the Chairman to refuse applications for licences under the Town Police Clauses Act 1847 and The Local Government (Miscellaneous Provisions) Act 1976 as follows, where such applications do not comply with the Policy :-

(i) Applications for hackney carriage licences under Section 37 The Town Police Clauses Act 1847 ;

(ii) Applications for private hire vehicle licences under Section 48 The Local Government (Miscellaneous Provisions) Act 1976;

(iii) Applications for private hire operator licences under Section 55 The Local Government (Miscellaneous Provisions) Act 1976;

(iv) Applications for a licence to drive hackney carriages under Section 46 The Town Police Clauses Act 1847;

(v) Applications for a licence to drive private hire vehicles under Section 51 The Local Government (Miscellaneous Provisions) Act 1976.

**L
20/09**

Private Hire Driver - MPH

Consideration was given to a report on what action to take in respect of a licensed private hire driver who has failed to submit an application to enable his three yearly criminal record check to be carried out and who was at the time of this meeting suspended.

Mr M P H was a licensed private hire driver. He had held a licence since January 2006 and his current licence was due to expire on 31st December 2009.

As part of the process to ensure drivers were still considered to be a fit and proper person to hold their licence they are required to submit to an enhanced

criminal record check with the Criminal Records Bureau (CRB) every 3 years.

Mr M P H was written to and advised that his next check was due on 9 December 2008 and requested to complete the appropriate form to enable this check to be carried out. As he failed to complete the application a reminder letter was sent to him on 3 January 2009.

Despite these letters Mr M P H failed to return his completed forms and this resulted in his private hire drivers' licence being suspended by the Trading Standards and Licensing Manager using his delegated powers on 17 February 2009. A copy of the notice of suspension was attached to the report.

Mr M P H did return his driver badges on 19 February 2009 when he collected another CRB application form but this had never been returned.

At the meeting held on 14 April 2009 Members agreed to defer consideration of this matter as Mr M P H had advised officers that he had not submitted his application because of financial reasons and promised to submit it the following day. However he did not go into the office and an application had still not been submitted.

Mr M P H was written to again on 21st April 2009 when he was advised again that his failure to submit the CRB application would be referred to the Licensing Committee. He had not replied to the letter or made contact with the Licensing Office.

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 with 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.

Members were advised that Mr M P H had now submitted an application to enable his 3 yearly criminal record check to be carried out. Mr M P H's private hire drivers licence would remain suspended until such time as the CRB disclosure was received and when Mr M P H's continued fitness to hold such a licence will be re-assessed by officers at that time.

RESOLVED that Mr M P H's private hire drivers licence remain suspended until such time as the CRB disclosure is received and when Mr M P H's continued fitness to hold such a licence would be re-assessed by officers at that time.

**L
21/09** **Hackney Carriage Driver - MA**

Members were informed that Mr M A would not be in attendance at the meeting as he was abroad. Members felt that in the interest of natural justice the item should be deferred.

RESOLVED that the item be deferred.

**L
22/09** **Hackney Carriage Driver - NM**

Consideration was given to a report on a licensed Hackney Carriage Driver who had been complained about by a member of the public. The complaint was with regard to Mr N M's attitude and refusal to take a wheelchair user in his hackney carriage.

Mr N M was a licensed Hackney Carriage Driver with the authority since 1996. His current licence was due to expire on 31st August 2009.

In December 2008 the licensing department received a complaint from a member of the public with regard to the manner and attitude of Mr N M when it was alleged that he refused to take a wheelchair user from the rank in Stockton. A copy of the witness statements were attached to the report.

Mr N M was interviewed by Licensing Officers on 11th February 2009 regarding the complaint. During interview Mr N M gave his version of the events that took place that evening. A summary of the transcript of the interview was attached to the report.

Mr N M alleged that he had a fare in the car and that the assistance male with the wheelchair user asked the passengers if they could vacate as there was a wheelchair user in need of a taxi and no other wheelchair accessible taxis on the rank. The majority of the passengers obliged. Allegedly one or two didn't want to alight from the vehicle and while they were getting out Mr N M said that the wheelchair user began being abusive and racist towards him and he therefore refused the job.

Mr N M then took another fare and left the rank. On his return from that job he called in at Stockton Police Station where he advised officers he spoke with a civilian female police officer. Following enquiries with Stockton Police it was confirmed that Mr N M did attend the Police Station in the early hours of that

night. However a statement from the officer that night confirmed that Mr N M did attend the Station and spoke with a male uniformed officer who had no recollection of Mr N M referring to racism in his initial complaint. A statement from the officer was attached to the report.

Mr N M did not pursue his complaint to the Police with regard to the alleged racial abuse.

A further incident occurred in February 2009 with the same wheelchair user and Mr N M. Mr N M was approached by the females with the wheelchair user and asked if he could take them home. Mr N M refused the fare due to the previous incident and the females allegedly advised that if he took them they would forget about the previous incident. Mr N M still refused and during interview Mr N M alleged that one of the females then spat at him. He closed his window and drove away. Mr N M did not report this incident to the police or the council.

According to Council records Mr N M's driver history showed that he had received one oral warning in August 2006 in relation to having duplicate DVLA 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.

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.

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

Mr N M and his representative Councillor Walmsley were in attendance at the meeting and were given the opportunity to state their case.

Members had regard for the report and attached appendices, copies of which had been given to Mr N M prior to the meeting. Members also listened carefully to what Mr N M and his representative had to say with regard to the matters disclosed and to the evidence given at the meeting by the complainant (Mr W) and other witnesses (Mr F, Miss L and Miss F).

Members considered all of the evidence and Mr N M's counter allegations that the witnesses had racially abused him and that one of the witnesses had spat at him. Members preferred the evidence of the witnesses over that given by Mr N M and noted that the witnesses were all consistent that no verbal racist abuse had occurred during the two occasions when Mr N M had refused to take the wheelchair user as a fare. Members found Mr N M's willingness to allege racial abuse was most concerning and was a deliberate attempt by Mr N M to discredit the witnesses. It was noted that Mr N M had failed to mention any verbal racist abuse when he had reported a dispute with a passenger to the Police and furthermore Mr N M also failed to mention verbal racist abuse when he reported the matter to Mr Barnes, Licensing Officer. Members were satisfied that had Mr N M mentioned this to the Police on the night in question then they would have had taken action and investigated the complaint. Mr N M also accepted that he had failed to report the alleged spitting incident. Members found Mr N M's evidence to be unreliable. On the balance of probabilities the Members preferred the evidence of the complainant and the witnesses and believed that Mr N M had refused to take this fare without just cause. Members were also concerned with Mr N M's allegations of racism which were unreported and unsubstantiated.

Given their findings that Mr N M had failed to take a fare on two separate occasions and their findings over the reliability of Mr N M's evidence Members then went on to consider whether they were satisfied that Mr N M was still a fit and proper person to hold a licence.

Members felt that there were sufficient grounds under the above legislation to revoke Mr N M's hackney carriage drivers licence as his behaviour had been totally unacceptable. However because of Mr N M's good past record as a licensed driver and as this was the first complaint which had been received about Mr N M and which had resulted in Mr N M being brought before the Licensing Committee Members felt that on this occasion to issue Mr N M with a severe final warning as to his future conduct. Members hoped that Mr N M had learnt a valuable lesson. Members also reminded Mr N M of his obligations in carrying disabled passengers.

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

**L
23/09**

Application For A Private Hire Driver's Licence - SB

Consideration was given to a report on an application for the grant of a Private Hire drivers licence from an applicant who had a previous licence revoked by this Committee following a conviction for assault and who had a further Police Caution for Battery and two speeding offences.

Mr S B had made an application to become a Licensed Private Hire Vehicle driver. The application was received in November 2008 and as part of that process Mr S B declared a number of convictions and a Police Caution. A copy of his application form and driving licence was attached to the report.

The declared convictions were for two speeding offences carrying the codes SP30 one from May 2007 and the second from March 2008, a conviction for Assault Occasioning Actual Bodily Harm from August 2005, and a Police Caution for Battery from April 2007.

As part of the application process a Criminal Record Bureau check was carried out and this confirmed the above to be true. Following this Mr S B was invited to the office for an interview in relation to the information he had provided on his application form. A copy of that record of interview was attached to the report. A copy of the Bureau disclosure was be available at the meeting.

Following the information regarding his sessions with the Counsellor Mr S B was advised to submit some written confirmation of this with his progress to date.

For Members information Mr S B was previously licensed by the Authority as a Private Hire Driver and that Licence was revoked by the Licensing Committee in November of 2005 following his conviction for assault Minute Reference 642 referred and was attached to the report.

Member were reminded that under the provisions of Section 51(1) (a) of the Local Government Miscellaneous Provisions Act 1976 which instructed District Councils 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 Councils adopted guidelines on the relevance of convictions was attached to the report for Members information.

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

Members felt that Mr S B's application for the grant of a Private Hire drivers licence should be refused on the grounds that Mr S B was not considered to be a fit and proper person at this time because of his convictions and his most recent Police Caution dated 26 April 2007. Members also had regard to the documents Mr S B produced in support of his application. Members arrived at the decision after consideration of the report, a copy of which Mr S B had been provided with prior to the meeting.

RESOLVED that Mr S B's application for the grant of a Private Hire drivers licence be refused on the grounds that Mr S B was not considered to be a fit and proper person at this time because of his convictions and his most recent Police Caution dated 26 April 2007.

L
24/09

Application For A Hackney Carriage Vehicle Licence - MAD

Mr M A D was not present at the meeting. Members determined that Mr M A D had been given sufficient notice of the meeting and as the matter had been

deferred from a previous meeting they agreed to consider the application in Mr M A D's absence.

Consideration was given to a report an application for a new hackney carriage licence in respect of a vehicle, a saloon car, which was not in keeping with the Council's policy which restricted the issue of new licences to vehicles which were fully wheelchair accessible and which was introduced with the objective of increasing the number of fully accessible vehicles and improving taxi provision for disabled taxi users.

At the meeting held on 27 January 2009, after consideration of an officer's report and to comments received from the trade and other interested parties following an extensive consultation exercise and meetings with trade representatives, Members had agreed a consolidated policy document in respect of Hackney Carriage and Private Hire Licensing be referred to Cabinet for approval. (Minute L 77/08 referred).

This policy was agreed by Cabinet at their meeting held on 5 March 2009 (Minute CAB 158/08 refers) when it was resolved that all new applications for hackney carriage vehicle licences shall be required to comply with the policy's revised specification in relation to wheelchair accessible vehicles (WAVs), until the total number of WAVs licensed reaches 25% of the total hackney carriage fleet, which equates to 70 vehicles, when the policy would then be reviewed, or the policy would be reviewed in three years time, whichever was the earlier.

Members were respectfully reminded that the decision relating to the provision of WAVs was taken in an attempt to substantially improve taxi provision for people with disabilities.

Members were also reminded that at the meeting held on 27 January 2009 it was also resolved that future applications for hackney carriage and private hire vehicle licences that did not meet the proposed standards except for the replacement of existing licensed vehicles on a like for like basis when they had been subject to being written off or subject to uneconomic repair would be deferred pending the final ratification of the new policy which they would then be expected to comply with.

On 25 February 2009 an application was received for the grant of a new hackney carriage vehicle licence in respect of a saloon vehicle from Mr M A D. A copy of the application and his covering letter were attached to the report.

As the proposed vehicle did not meet the specification for WAVs approved in the revised policy the applicant was written to and offered the opportunity to explain to the Council, in writing, why they should depart from the proposed policy in their particular case. Mr M A D was also asked as he stated that he had recently moved to the area to live in Middlesbrough whether he had made the same application to Middlesbrough Council and why he had waited until now to make the application when the vehicle was acquired new in October 2007. A copy of this letter was attached to the report.

Mr M A D had replied to the letter and a copy of his reply was attached to the report.

Members were informed that Mr M A D had prior to the meeting been given the opportunity to explain to the Council in writing, why the Council should depart from the current policy which restricted the issue of new Hackney Carriage licences to vehicles that complied with the policy's specification in relation to wheelchair accessible vehicles (WAVs) until the total number of WAVs reaches 25% of the total Hackney Carriage fleet, which equated to 70 vehicles. A Copy of Mr M A D's letters of reply were attached to the report.

Members felt that the vehicle did not meet the Council's Policy Specification and that Mr M A D had not submitted any valid reasons for departing from the policy and Mr M A D's application was therefore refused.

RESOLVED that Mr M A D's application for a Hackney Carriage Vehicle Licence be refused as the vehicle did not meet the Council's Policy Specification and Mr M A D had not submitted any valid reasons for departing from the policy.

L
25/09

Combined Driver - SNA

Members were informed that a written request had been received from Mr S N A requesting that this item be deferred as Mr S N A could not attend the meeting due to work commitments. Members agreed to the request in the interest of natural justice.

RESOLVED that the item be deferred.