

Licensing Committee

A meeting of Licensing Committee was held on Tuesday, 23rd November, 2010.

Present: Cllr Bill Woodhead (Chairman); Cllr Dick Cains, Cllr Mrs Eileen Craggs, Cllr Ken Dixon, Cllr Miss Tina Large, Cllr Alan Lewis, Cllr Mrs Ann McCoy, Cllr Roy Rix and Cllr Fred Salt.

Officers: L Maloney, S Mills (DNS); J Nertney, P K Bell (LD).

Also in attendance: Mr A S H, Mr Wilson (AtoZ Licensing - Representing Mr A S H) for agenda item 7 - Combined Hackney Carriage & Private Hire Driver - Mr A S H.

Apologies: Cllr Jean Kirby, Cllr Paul Kirton, Cllr Colin Leckonby and Cllr Maurice Perry.

L Declarations of Interest

93/10

There were no interests declared.

L The minutes of the meetings held on 28th June, 28th July, 23rd August 94/10 2010 to be signed by the Chairman as a correct record.

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L Licensing Protocol

95/10

Consideration was given to a report on a protocol that had been drawn up in relation to the Council's licensing functions with a view to the protocol been referred to Cabinet for approval.

The Licensing Committee was responsible for regulating "licensable activities" which were defined in the Licensing Act 2003 as the sale of alcohol, the provision of regulated entertainment and late night refreshments. The Licensing Committee determined applications in accordance with the Licensing Policy. The Gambling Act 2005 regulated lotteries, the licensing of betting and gaming premises and regulation of gaming machines and activities within clubs and pubs.

The procedure of the Licensing Committee was regulated by the Licensing Act 2003 (Hearings) Regulations 2005 and The Gambling Act 2005 (Proceedings of Licensing Committees and Sub-Committees) (Premises Licences and Provisional Statements) (England and Wales) Regulations 2007 (SI 2007 No 173) which lay down detailed procedural requirements. The Protocol provided that applications were to be determined in accordance with those detailed requirements and it must therefore be read in conjunction with them.

The Licensing Protocol provided guidance to Members of the Licensing Committee when dealing with licensing matters under the Licensing Act 2003 and Gambling Act 2005. A copy of the protocol was attached to the report.

It was also important to stress that the Protocol was intended to set out principles to guide members and officers. It could not cover every situation and must be applied with common-sense and flexibility. Its aim was to protect the

integrity of the licensing system.

Members were given the opportunity to ask questions and make comments on the protocol. Members made some minor alterations to the protocol which were noted.

RESOLVED that:-

1. Members comments be received.
2. The protocol be referred to Cabinet for approval.

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96/10**

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.

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97/10**

Private Hire Driver - A.S.

The Licensing Officer informed Members as to why Miss A S was not in attendance at the meeting. The Licensing Officer advised Members that after contacting Miss A S by telephone she advised her that she had got her dates mixed up, as she thought it was the week after and that she would attend the next meeting and she gave her assurances that she would attend.

The Licensing Officer advised Members that Miss A S was due to attend Licensing Committee in February 2010 but was unable to attend due to illness. That meeting was rescheduled to take place on 27th April 2010 however, Miss A S was unable to attend again due to her sickness and Miss A S provided the Licensing Officer with documentary evidence to confirm this.

The Licensing Unit wrote to Miss A S on the 7th May 2010 advising her that the Licensing Committee could not continue to defer the hearing indefinitely and for that reason the Licensing Unit asked Miss A S to confirm if she would be fit enough to attend a future hearing, if not the Committee would require confirmation from her GP that her illness did prevent her from attending.

The Licensing Officer then contacted Miss A S via telephone on Wednesday 10th November 2010 to ask if she was well enough to attend the Licensing Committee on Tuesday 23rd November 2010. Miss A S confirmed that she would be ok to attend and also apologised for not getting in touch previously.

Members had regard to what Miss A S had said to the Licensing Officer as well as her conversation with the Licensing Officer on the 10th November 2010 when she confirmed she would be attending the meeting on the 23rd November 2010. They also noted the fact that Miss A S was also provided with a copy of the report which included a specific invite letter advising Miss A S that if she failed to attend then the Committee may proceed with this item in her absence. Members also considered the fact that this item had been deferred on two previous occasions and they felt that Miss A S had been given plenty of notice

of the meeting and therefore decided to go ahead with the hearing in Miss A S's absence.

Consideration was given to a report on a renewal application from a private hire driver who had since the grant of her licence provided a positive drugs test sample to officers of this Council and was suspended.

Miss A S was a Private Hire Driver with the Authority and her licence expired on the 31st December 2009. A copy of her renewal application form including driving licence was attached to the report.

On the 1st May 2009 a complaint was received about Miss A S, the complainant alleged that Miss A S was taking Amphetamine and Cocaine.

On the Friday 11th December 2009 Miss A S was contacted by the Licensing Unit and requested to attend 16 Church road to discuss the complaint. Miss A S agreed to attend on Monday 14th December 2010.

Miss A S attended the arranged appointment and she was advised about the complaint that had been made against her and she was asked if she was willing to provide a oral fluid sample for a drug screening test that may either prove or disprove the complaint.

Before undertaking the drug screening test Miss A S went on to explain that she was expecting our call as she was having problems with her neighbours. She also admitted to taking recreation drugs before but not whilst she was working. A copy of the meeting notes which were taken at the time were attached to the report.

An oral fluid sample was provided by Miss A S for the drugs test procedure and the test was carried out in the presence of Miss A S by two Licensing Officers. This test revealed that Miss A S had provided a positive oral fluid sample for amphetamines and benzodiazepines. Miss A S was given a print out of the test results for her information and she also signed the Licensing print out which was available at the meeting.

As Miss A S had provided a positive sample she was requested to provide a further oral fluid sample which would be divided into two sealed samples and sent Cozart laboratory for analysis. Miss A S agreed and provided a further oral fluid sample under full chain of custody procedure which was sent to Cozart laboratory.

On the 23rd December 2009 a certificate of analysis was received from Cozart which confirmed a positive result for both amphetamines and benzodiazepines; however their Medical Review Officer had verified that it is positive for amphetamines and a negative for benzodiazepines. The reason it was negative for benzodiazepines was that Miss A S has provided to officers documentary evidence from her doctors surgery which showed she had been prescribed this type of medication recently. A copy of the analysis certificate was attached to the report and copy of Miss A S's documentary evidence was available at the meeting.

As a result of this Positive Result it was considered to be "sufficient reasonable"

cause under the provisions of section 61(1)(b) Local Government (Miscellaneous Provisions) Act 1976 to suspend Miss A S's private hire drivers licence with immediate effect. A copy of the notice was attached to the report.

Members were advised that Miss A S still remained suspended.

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.

Members had regard to the report and appendices, copies of which had been provided to Miss A S prior to the meeting. They also noted that Miss A S had failed to co-operate with officers requests to allow her doctor to release information regarding her medical conditions.

Members noted the medical review officer for Cozart had confirmed that the presence of amphetamine in the oral fluid sample Miss A S had provided was consistent with the use of amphetamine prior to the sample collection and had therefore verified the sample as positive saliva for amphetamines.

Members also took into consideration the fact that in May an anonymous complaint had been received alleging that Miss A S was using illegal drugs. At that time the Council did not have drug testing equipment but when this was obtained and Miss A S was tested in October 2009 Miss A S tested positive which was confirmed by the laboratory analysis at Cozart.

On the balance of probabilities Members found that while holding a licence to drive private hire vehicles Miss A S had used illegal drugs. This could potentially have had an effect on public safety for those persons been driven by Miss A S or for other road users. Furthermore even if Miss A S used such drugs in a

recreational manner this called into question her fitness to hold a licence.

Members agreed that Miss A S's behaviour in taking illegal drugs was not that of a fit and proper person to be licensed by the Authority and was sufficient reasonable cause under Section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976 to revoke Miss A S's Private Hire Drivers licence. As Members found that the taking of illegal drugs could have an impact on public safety they agreed to revoke Miss A S's licence with immediate effect under Section 61(2)(B) of the Act.

RESOLVED that:-

1. Miss A S's Private Hire Drivers licence be revoked as Miss A S's behaviour in taking illegal drugs was not that of a fit and proper person to be licensed by the Authority and was sufficient reasonable cause under Section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976.

2. As Members found that the taking of illegal drugs could have an impact on public safety Members agreed to revoke Miss A S's licence with immediate effect under Section 61(2)(B) of the Act.

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98/10 Private Hire & Hackney Carriage Driver - A.S.H.**

Consideration was given to a report an application for the renewal of a licence from a combined Hackney Carriage/Private Hire driver, who during the term of his licence was suspended with immediate effect and was still suspended by the Authority, after he was arrested for False Imprisonment. Since this date there had been several Police Notifications after he had been arrested for a variety of offences and has also been convicted of Battery.

Mr A S H was a licensed combined hackney carriage and private hire driver and had been licensed with the Authority since 2000. Mr A S H combined drivers licence expired on the 29 February 2009, however, during the suspension of his licence Mr A S H had continually applied to renew his licence. Copies of these applications including a copy of his driving licence was attached to the report. For Members information Mr A S H had 3 penalty points on his DVLA driving licence, offence code CU30 which using a vehicle with a defective tyre.

On the 4 March 2008 the Licensing Unit received notification from Cleveland Police that Mr A S H had been arrested for False Imprisonment. It was alleged that in January 2008 Mr A S H along with other males held a person against their will and threatened him with a shot gun.

Given the serious nature of the allegations on the 5th March 2008 it was decided to suspend with immediate effect Mr A S H's combined driver's licence under section 61(2B) Local Government (Miscellaneous Provisions) Act 1976. Mr A S H remained suspended. A copy of the suspension notice was attached to the report.

On the 7th July 2008 the Licensing Unit received notification from Cleveland Police that Mr A S H had been arrested for Common Assault. It was alleged that on the 15th June 2008 at Stockton, Mr A S H was one of several males who assaulted a male by punching and slapping him.

On the 10th March 2009 the Licensing Unit received a further notification from Cleveland Police that Mr Hussain had been arrested for:-

1. Harassment – Put in fear of violence on the 1st June 2008,
2. Intimidating a witness or juror with intent to obstruct, pervert or interfere with the justice on 8th October 2008,
3. Common Assault 11th October 2008.

On the 9th January 2009 a decision was made by Police/CPS to take no further action in relation to the offences mentioned above. The notification also informed the Licensing Unit that Mr A S H was arrested for Wounding/Inflicting Grievous Bodily Harm (GBH) on the 14th January 2008 and had been charged to appear at Teesside Magistrates Court on 10th March 2009.

On the 13th March 2009 the Licensing Unit received a further notification from Cleveland Police that Mr A S H had been arrested for Possession of Controlled Drug With Intent To Supply – Class A – other. The details being on the 29th January 2009 at Junction Road, Stockton, Mr A S H was in a vehicle being followed by a marked police vehicle. It was alleged that once Mr A S H realised that he was being followed he threw a controlled substance from a vehicle before being stopped. The notification also detailed that on the 29th January 2009 a decision was made to take no further action in relation the offence.

On the 2nd June 2009 the Licensing Unit received a further notification from Cleveland Police that Mr A S H had been arrested for Destroy or Damage Property At A Value Unknown And Intimidating A Witness Or Juror with Intent To Obstruct, Pervert Or Interfere With Justice. On the 12th May 2009 at Outram Street, it alleged that Mr A S H was causing criminal damage to a car and it was also alleged that Mr A S H had been intimidating a male from Outram Street who was a witness to a previous grievous bodily harm case.

On the 29th June 2009 the Licensing Unit received confirmation from Cleveland Police that on the 17th April 2009 a decision was made to take no further action regarding the offence of False Imprisonment in January 2008.

On the 27th July 2009 the Licensing Unit received confirmation from Cleveland Police that Mr A S H appeared before Teesside Magistrates Court 18th June 2009 charged with offence of Battery as opposed to Common Assault which he was initially arrested for in June 2008. Mr A S H was convicted of the Offence of Battery and received a 12 Month Community Order and was ordered to do 250 hours of unpaid work. For Members information Battery was the unlawful application of force by the defendant upon the victim. Mr A S H appealed against his conviction to the Crown Court.

On the 2nd September 2009 the Licensing Unit received confirmation from Cleveland Police that the case against Mr A S H for GBH on the 14th January 2008 was not being proceeded with.

On the 26th November 2009 the Licensing Unit received confirmation from Cleveland Police that the cases against Mr A S H for which there was 3 offences of Destroy or Damage Property At A Value Unknown and Intimidating A Witness Or Juror with Intent To Obstruct, Pervert Or Interfere With Justice,

were heard at Teesside Crown Court on the 3rd November 2009 and all offences were dismissed as no evidence was offered by the prosecution.

On the 22nd January 2010 Mr A S H was interviewed about the various police notifications and also his conviction for battery. In short Mr A S H stated that all of the allegations were lies made up by people he knows. A transcript of the interview was attached at to the report. At this time he indicated his intention to appeal against his conviction for battery.

On 30th March 2010 Mr A S H's appeal against conviction for Battery was dismissed by the Crown Court, this meant the conviction was upheld and his sentenced remained the same but he was ordered to pay the prosecutions costs.

In August 2010 further enquiries were made with Cleveland Police Disclosure Team and they confirmed that Mr A S H had been arrested a further twice since their last disclosure. They explained that the reason we had not been informed of these arrests was Mr A S H had told Police at the time of arrest that he was unemployed instead of a taxi driver.

Confirmation of the arrest was received on the 20th August 2010. The details were that on the 13th November 2009 at Trinity Church Yard, Stockton-on-Tees, it was alleged that Mr A S H was involved in a fight. Mr A S H appeared before Teesside Magistrates Court on the 25th February 2010 charged with Using Threatening Abusive Insulting Words or Behaviour or Disorderly Behaviour to Cause Harassment, Alarm or Distress and he was found not guilty and case was discontinued.

The details of the second arrest were that on the 17th January 2010 at Durham Road, Stockton-on-Tees, it was alleged that Mr A S H threatened the injured party who was a witness in an ongoing Crown Court case. Mr A S H appeared before Teesside Crown Court on the 11th August 2010 charged with Intimidating A Witness Or Juror With Intent To Obstruct, Pervert Or Interfere With Justice and he was found not guilty, case dismissed as no evidence was offered.

Records showed that Mr A S H received a warning from the Licensing Unit in September 2005 following a complaint about his manner of driving and his behaviour. A copy of the complaint details and warning letter were attached to the report.

He also received a warning in January 2006 following a complaint from a Parking Attendant that Mr A S H verbally abused him. A copy of the warning letter was attached to the report.

Mr A S H received a further warning in January 2007 after he was arrested on the 25th May 2006 for GBH and Criminal Damage and also arrested on the 4th June 2006 Actual Bodily Harm and Violent disorder. Both offences were not proceeded with as there was insufficient evidence as the complainant had declined to prosecute. A copy of the warning letter was attached to the report.

An important part of the vetting process was to undertake a Criminal Record Bureau check (CRB). This was done on 6th January 2010 with a copy being

returned to the applicant. Further to the above mentioned information the record disclosed that on the 2nd August 2001 Mr A S H was arrested for Actual Bodily Harm, but he was later released no further action due to insufficient evidence to proceed. Mr A S H's CRB was available at the meeting.

Prior to Mr A S H getting a licence with the Authority he was convicted of 2 counts of Battery on 30th September 1996 and he was given 6 months conditional discharge for both offences, £35 in compensation and £30 costs. These were confirmed on the CRB disclosure.

A spreadsheet detailing the various offences which Mr A S H had been arrested for and any outcome was attached attached to the report.

Members were made aware that delay in this report being brought before the Licensing Committee was due to the Licensing Unit awaiting the outcome of police investigations and Mr A S H appealed against his conviction for battery.

All of the Police nonfictions were made available at the meeting.

A copy of the adopted guidelines relating to the Relevance of convictions was attached to the report.

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

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Mr A S H and his representative David Wilson AtoZ Licensing were in attendance at the meeting and were given the opportunity to state their case.

Members had regard to the report and appendices, copies of which had been

provided to Mr A S H prior to the meeting. Members also listened to what Mr Wilson had to say on Mr A S H behalf as well as Mr A S H's oral evidence.

Members had regard to Mr A S H's conviction for battery for which he was convicted on 18th June 2009. Under the provisions of Section 61(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 a conviction for violence since been granted a licence was one of the specific statutory powers to allow a Council to revoke and refuse to renew a licence.

Members noted that this was the second conviction for violence on Mr A S H criminal record. Members accepted that Mr A S H had been licensed by the Council in the knowledge of his first conviction and that at the time Mr A S H was initially licensed it was noted that his first conviction had been received when he was relatively young. However Members were concerned that rather than been an isolated incident when Mr A S H was young he had now received a further conviction for violence. This caused extreme concern to Members as the conviction from June 2009 was received while Mr A S H held a licence to drive hackney carriage and private hire vehicles. Members were also extremely concerned about the large amount of additional information disclosed by the Police on Mr A S H's CRB check. Members were also given an update on further information concerning criminal investigations concerning him since the receipt of his CRB check. Members took into consideration that he had not been convicted of any of the offences of which Mr A S H had been charged. However Members were concerned that this information appeared on Mr A S H's CRB check and were of the opinion that this could be taken into consideration when considering Mr A S H's fitness.

Members noted that under their policy on the relevance of convictions for violent offences you would normally have to show a period of three years from the date of conviction before been deemed suitable to hold a licence. Members did not find any reasons to persuade them to depart from their guidelines and they therefore agreed that Mr A S H's conviction for battery received on 18th June 2009 was sufficient cause to revoke Mr A S H's licence under Section 61(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 and therefore Mr A S H's applications to renew were also refused.

RESOLVED that:-

1. Mr A S H's conviction for battery received on 18th June 2009 was sufficient cause to revoke Mr A S H's licence under Section 61(1)(a) of the Local Government (Miscellaneous) Provisions Act 1976 and therefore Mr A S H's applications to renew were also refused.
2. As the Committee found that Mr A S H had a conviction for violence the safety of the public was deemed to be relevant and the Committee were of the view that in the interests of public safety the revocation of the licence has immediate effect pursuant to Section 61 2(B) of the Local Government (Miscellaneous Provisions) Act 1976.