

Licensing Committee

A meeting of Licensing Committee was held on Monday, 27th June, 2011.

Present: Cllr Paul Kirton (Chairman); Cllr Michael Clark, Cllr Evaline Cunningham, Cllr Phillip Dennis, Cllr Eileen Johnson, Cllr Alan Lewis, Cllr Ray McCall, Cllr Mrs Kath Nelson, Cllr Maurice Perry and Cllr Bill Woodhead.

Officers: C Barnes, S Mills, M Vaines (DNS); P K Bell, J Nertney (LD).

Also in attendance: For agenda item 7 - Private Hire Driver Mr T M - Mr T M, Witness; For agenda item 8 - Mr N M, Mr Wilson (A to Z Licensing - Representing Mr N M), Mr O (Tyneside Food - Character Witness for Mr N M), Ms B G (Witness) Mr I G (Father of Ms B G).

Apologies: Cllr Ken Dixon, Cllr Jean Kirby, Cllr Miss Tina Large and Cllr David Wilburn.

L Declarations of Interest

1/11

There were no interests declared.

L Licensing Act 2003 - Minor Variations

2/11

Consideration was given to a report that informed Members of the delegated decisions that had been taken by Officers in relation to minor variation applications under the Licensing Act 2003 for the period January to March 2011.

At the meeting held on 27th April 2010 Members considered a report on the number of minor variation applications determined by Officers under the Licensing Act 2003 using delegated powers.

At that meeting Members agreed that there be no change to the delegated powers but requested that future update reports provide more details of applications that had been refused. Minute L 2/10 referred.

Members were advised that since the last report a further seven applications for minor variations had been received, two of which had been refused. A list of the premises that had been subject to minor variation applications was attached to the report.

In respect of the two that were refused one was in respect of an application to extend the trading hours of a public house in Yarm High Street to 3.30 on the morning that British Summertime begins. It was considered that this would impact adversely on the licensing objectives relating to the prevention of crime and disorder and prevention of public nuisance and was also considered to be excluded from the minor variation process as it involved the extension of the hours for the sale or supply of alcohol. The second application was to remove a condition that prohibited children from being allowed in a public house and involved the potential to impact adversely on the protection of children from harm objective and resulted in a representation being received from Cleveland Police.

RESOLVED that the report be noted.

L Equality Act 2010 - Taxis and Private Hire Vehicles

Consideration was given to a report that informed Members of the results of the consultation exercise carried with the taxi trade and local disabled groups on the issue as to whether the Council should maintain a list of "designated wheelchair accessible vehicles" under new powers contained in The Equality Act 2010 and sought Members views on how to proceed.

At the meeting held on 10th November 2010 Members were advised of new powers introduced under The Equality Act 2010 which allowed local authorities to maintain a list of "designated wheelchair accessible vehicles" licensed in there area. The consequence of being on this list was that the driver must undertake the duties specified in the Act to assist passengers who use wheelchairs.

At that meeting Members agreed that officers consult with the taxi trade and disabled groups and report back to the Licensing Committee. A copy of Minute L 85/10 that referred was attached to the report.

802 questionnaires were sent out to all members of the taxi trade and 75 replies were received. In response to the question whether the Council should maintain a list of designated wheelchair accessible vehicles 29 were in favour 22 were against and 24 did not know.

Local disabled groups and their members were consulted via the Stockton Disability Advisory Group with a specific questionnaire being sent to all of its members. 13 replies were received, 12 of whom were in favour of the Council maintaining a list and one was against this option.

Members were advised that there had been no further information from the Department of Transport regarding the commencement of this part of The Equality Act and Members were therefore asked to consider whether or not the Council should start maintaining a list of "designated vehicles" in light of the results of the consultation exercise. Members were advised that there were 36 wheelchair accessible vehicles licensed in Stockton of which 27 were hackney carriage vehicles and 9 were private hire vehicles.

Members were respectfully reminded that before the duties on drivers were brought into force, drivers of designated vehicles who suffered from a disability or medical condition which would make it impossible or unreasonably difficult to provide physical assistance could apply for an exemption from the duties to offer assistance.

This exemption section was commenced on 1st October 2010 and the Council would therefore need to have a system in place for assessing drivers and a system for granting exemption certificates for those drivers who they considered should be exempt.

Also from October, it was possible for drivers to appeal against a decision by the Council not to grant an exemption; this appeal would also go to the magistrates' court.

The Department for Transport had indicated that they would be making regulations early in 2011 specifying the format for the Exemption Notices that

Councils would issue and exempt drivers would be required to display in their vehicles and they would also print and distribute the Exemption Notices. To date no such regulations had been made.

Officers recommended that any driver wishing to apply for an exemption should be required to produce a report either from his own doctor or his consultant, when applicable, confirming that his medical condition or physical condition made it impossible or unreasonably difficult for him/her to comply with the duties and that each application be determined on its individual merits.

Members views were requested therefore on this recommendation and on whether applications for exemptions should come before the Licensing Committee for determination or whether the ability to determine applications for exemptions be delegated to Officers in consultation with the Chairman and Vice Chairman of the Licensing Committee.

Members discussed the item and felt that a list of designated vehicles should be maintained and that the ability to determine applications for exemptions be delegated to Officers in consultation with the Chairman of the Licensing Committee.

RESOLVED that:-

1. The list of designated vehicles be maintained.
2. The determination of applications for exemptions from drivers be delegated to Officers in consultation with the Chairman and Vice Chairman of the Licensing Committee.
3. The recommendation be referred to Cabinet for approval.

L
4/11 **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 paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act.

L
5/11 **Hackney Carriage and Private Hire Driver - M.S.**

Consideration was given to a report on a licensed combined hackney carriage and private hire driver who had failed to submit an application to enable his three yearly criminal record check to be carried out and who was as a result suspended.

Mr M S was a licensed combined hackney carriage and private hire driver. He has held a licence since 1992 and his licence was due to expire on 29th February 2012.

As part of the process to ensure drivers were still considered to be a fit and proper person to hold their licence, they were required to submit an enhanced criminal record check with the Criminal Records Bureau (CRB) every 3 years.

On 4th February 2011, Mr M S was written to and advised that his next check was due on 14th March 2011 and requested to complete and submit the appropriate form to enable this check to be carried out. A copy of the letter was attached to the report. As he failed to complete the application, a reminder letter was sent to him on 7th March 2011. A copy of this letter was attached to the report.

Despite these letters Mr M S failed to return his completed forms and this resulted in his hackney carriage and private hire drivers licence being suspended by the Trading Standards and Licensing Manager using his delegated powers on 31st March 2011. A copy of the notice of suspension was attached to the report.

Mr M S returned his driver badges on 26th April 2011. However, to date Mr M S had not made contact with the Licensing Office to complete his application for a criminal record check.

Licensing records also showed that Mr M S failed to complete his CRB application on time in 2004, despite advisory letters sent on 8th September 2004 and 18th October 2004. This resulted in his hackney carriage and private hire drivers licence being suspended on 16th November 2004. A copy of this notice of suspension was attached to the report. Mr M S then completed the CRB disclosure process on 24th November 2004.

In addition, Mr M S failed to complete his CRB application on time in 2007, despite advisory letters sent on 29th October 2007 and 4th December 2007. This resulted in his hackney carriage and private hire drivers licence being suspended on 2nd January 2008. A copy of this notice of suspension was attached to the report.

This matter was subsequently referred to the Licensing Committee on 26th February 2008, where the matter was deferred pending the return of Mr M S's CRB disclosure. Mr M S completed the CRB disclosure process on 14th March 2008.

The matter was then referred back to the Licensing Committee on 8th April 2008, where Mr M S's renewal application was subsequently approved. A copy of the minutes of the meeting were attached to the report.

Following the Licensing Committee meeting, a letter dated 23rd April 2008, was sent to Mr M S warning that in future any request made in the proper manner by the Council should be complied with without delay. A copy of this warning letter was attached to the report.

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.

Mr M S was in attendance at the meeting and was given the opportunity to address Members.

Members listened to what Mr M S had to say regarding his opinion on the Council accepting his copy of a CRB disclosure that he had obtained in October 2010 with another Council. However Mr M S was advised that it was the policy of the Council not to accept such disclosures because of the risks associated with portability, which were identified on the CRB's website, and that Mr M S had not provided Members with any information that would persuade them to depart from the current policy. Members were satisfied that Mr M S was fully aware of the policy in this matter as this was not the first time that Mr M S had failed to complete his three yearly CRB application as per the Council policy. Mr M S's licence had been suspended in 2004 until his CRB application was eventually submitted in November 2004 and again his licence was suspended in January 2008 for the same thing which resulted in Mr M S appearing before the Licensing Committee on 8th April 2008 when the issue of accepting a previous CRB disclosure with Middlesbrough Council was discussed and when Mr M S was advised then that it was not acceptable to the Council and that he was also required to complete an application for Stockton Borough Council when requested. At that time as Mr M S had completed his application which had revealed no convictions Mr M S's licence had been approved subject to a written warning that he comply with any future requests made by the Council in the proper manner without delay. At that time records also indicated that Mr M S submitted a letter of apology for the delay in completing his CRB application which was brought to the attention of the Licensing Committee.

After giving Mr M S's current failure to complete a CRB application due deliberation Members decided on this occasion to defer further consideration of what action to take to their next full committee hearing, which will take place on Tuesday 26th July, to allow Mr M S the opportunity to decide on whether he would comply with the Councils request and submit his application for a CRB check otherwise it was agreed that Mr M S would leave Members with no alternative but to revoke his licence at the next meeting.

RESOLVED that the item be deferred.

**L
6/11**

Private Hire Driver - T.M.

Consideration was given to a complaint received from a member of the public in relation to a Licensed Drivers alleged behaviour whilst in a Private Hire Vehicle.

Mr T M had been a licensed private hire driver since April 1999.

On Tuesday 25th January 2011 a complaint was received from a member of the public that she had observed a taxi driver behaving inappropriately in his taxi in broad daylight in a public car park. The location of the incident was the Wynyard Woodland Park near to Thorpe Thewels, Stockton-on-Tees.

A statement was taken from the complainant on the 3rd February 2011 and a copy of the statement was attached to the report.

The incident was reported to the Council within ten minutes of it taking place by telephone. The vehicle details were checked with the vehicle proprietor who confirmed to an Officer that the driver of the vehicle at the time of the incident was Mr T M.

The Operator confirmed Mr T M had been working on that morning, but at the time of the incident he was not logged onto the system to obtain work. The officer who dealt with the initial complaint contacted Stockton Security Centre and a copy of the CCTV which covered Wynyard Woodland Park was made available and was viewed by Members.

Mr T M was contacted in relation to the complaint and attended for interview on 7th February 2011. A copy of the record of interview was attached to the report.

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.

A copy of the Councils Private Hire Drivers conditions was attached to the report.

Mr T M had been a licensed driver for over twelve years and the records indicated that he has previously been suspended pending the completion of a Criminal Record Bureau Check. Mr T M was also sent an advice letter on 7th June 2011 regarding the use of the Bus Lane on Yarm Road, Stockton-on-Tees.

Mr T M and Mr T M's witness were in attendance at the meeting and were given the opportunity to address Members. The complainant was not in attendance at the meeting.

As the complainant did not attend the meeting Members had regard to the complainant's witness statement. Members also viewed footage from a CCTV camera located at the car park. The CCTV footage was inconclusive and after hearing Mr T M's evidence the Members found the allegation to be unproven on the balance of probabilities.

Members however agreed to issue Mr T M with a warning as to his future conduct. Mr T M was in a vehicle licensed by the Council and although Mr T M stated he was not working at the time he should be conscious of the public's perception of activity that takes place in the vehicle. In future Mr T M should be conscious of how he conducts himself in the vehicle.

RESOLVED that Mr T M be issued with a warning as to his future conduct.

L
7/11

Application For A Private Hire Driver Licence - N.M.

Consideration was given to a report on an application for a private hire driver's licence from an applicant who had been working in the Borough of Stockton-on-Tees on a Berwick/Northumberland Council Hackney Carriage Drivers Licence. During the time he had been working within the Borough, a complaint was received by the Licensing Department from a young female in which she alleges the applicant behaved inappropriately towards her.

Mr N M had applied to become a licensed private hire driver with the Authority a copy of his application including his DVLA driving licence 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 the 22nd December 2010 with a copy being returned to the applicant. This revealed that Mr N M had no criminal convictions.

Mr N M had been employed by Tees Valley Cabs as Berwick / Northumberland Hackney Carriage Driver undertaking private hire work within the Borough of Stockton-on-Tees.

On the 19th November 2011 the Licensing Department received a complaint from a young female who feared for her safety when she was a customer in Mr N M's vehicle. The details of the incident were included within the report. A copy of the witness statement was attached to the report.

The complainant also contacted Police to report the incident. PC David Angel dealt with the complaint and he confirmed that there were no criminal offences disclosed and Mr N M was given a warning regarding his conduct. PC Angel was able to confirm that he had seen the complainant's mobile phone which showed an initial call from Mr N M's mobile phone. This call was made to inform the complainant that the taxi was outside but PC Angel could not recall seeing a second call or a missed call on the complainant's mobile phone. PC Angel stated that when he spoke with her she was more concerned about his manner

and conduct during, and at the end of the journey rather a second call which was allegedly made.

Given the serious nature of the complaint Mr N M was interviewed in relation to the complaint and denied everything that was put to him in relation to the allegations made. A transcript of the interview was attached to the report.

During interview Mr N M produced a copy of his mobile phone bill which showed only one call had connected to the complainant's mobile phone, a copy of which was attached to the report.

Mr N M was given a copy of the Council's guidelines on Relevance of Convictions at the time of his application and a copy was attached to the report.

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

Mr N M, his representative (Mr Wilson AtoZ Licensing), the complainant, the complainant's father, Mr O (Tyneside Food - Character Witness for Mr N M) were in attendance at the meeting and were given the opportunity to outline their case, make comment and ask questions.

During the questioning of the complainant by Mr Wilson, it was suggested that there were inconsistencies and discrepancies in her recollection of the time the taxi was booked and the time she was collected and dropped off at her home address. This was deemed to be relevant by Members as it went to the credibility of the witness and/or Mr N M. Mr N M produced a copy of the Tees Valley Cabs Limited booking record which Mr N M said corroborated his case and showed that the complainant's statement and evidence was not accurate and, at best, that the complainant was mistaken as to the sequence of events.

Members therefore agreed to adjourn the hearing in order for further enquiries to be made into the booking records of Tees Valley Cabs and to obtain mobile phone records from the complainant and Mr N M. Following that the application would be referred back to Members at the earliest opportunity.

RESOLVED that the item be adjourned.