

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

LICENSING AND APPEALS BOARD – PANEL HEARING

**Minutes of a Meeting of a Panel of the Licensing & Appeals Board
on Tuesday 30th July 2013 at 12.30pm
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor A Lovett
and Councillor M Tilbury

OFFICERS PRESENT:

Rachael Edwards - Senior Democratic Services Officer
John Gilbraith - Licensing Manager

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB009/13

1. Apologies for Absence

There were no apologies for absence.

2. Items of Urgent Business

There were no items of urgent business.

3. Declarations of Interest

There were no declarations of interest.

4. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

5. Review of Combined Drivers Licence and Hackney Carriage Proprietor's Licence

The Chairman welcomed everyone to the meeting stating that the purpose of the hearing was to review the driver's Combined Driver's Licence and Hackney Carriage Proprietor's Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing and introduced himself

and confirmed that he would not be represented or be calling any witnesses. There were no witnesses on behalf of the Borough Council.

The Legal Advisor outlined the procedure that would be followed at the hearing and in doing so, explained that it was for the Panel to determine whether they deemed the driver a fit and proper person to continue to hold a Combined Driver's Licence and Hackney Carriage Proprietor's Licence. The licensed driver confirmed that he understood the procedure.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver currently held a licence to drive either a Hackney Carriage or Private Hire Vehicle which expired on the 31st October 2013. He also held a Hackney Carriage Proprietor's licence which expired on the 29th September 2013. The report was for Members of the Licensing Panel to review the driver's continued suitability to hold a Combined Drivers Licence and Hackney Carriage Proprietor's Licence following a conviction before West Norfolk Magistrates' Court in June 2013.

The Licensing Manager outlined details of the charge and subsequent conviction to Members of the Panel. Appendix One of the report was a letter from the driver dated 30th June 2013 in which he gave his background to the case.

The Licensing Manager explained that the Notifiable Occupations Scheme was introduced in 2006 and allowed Police forces to share information about investigations and charges when an individual came to notice as holding a particular vocation or profession. Taxi drivers were included within the scheme. Under the scheme a request was made to the Norfolk Constabulary at Police Headquarters Wymondham on the 2nd July 2013 for details of the driver's offence and conviction. Their response was as follows:

"Reference your enquiry regarding (the licensed driver), I would advise you that in this case the circumstances do not fall within the criteria laid down to disclose. We are only permitted to disclose where there is a pressing social need for the protection of the vulnerable, in this matter it was not the case".

The Licensing Manager advised that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council may suspend, revoke or refuse to renew a licence of a 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 has failed to comply with the provisions of the Acts; or
- (b) any reasonable cause.

Under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council may also suspend, revoke or refuse to renew a hackney carriage or private hire vehicle licence on any of the following grounds:

- (a) that the hackney carriage or private hire vehicle is unfit for use as a hackney carriage or private hire vehicle;
- (b) any offence under, or non-compliance with, the provisions of the Act of 1847 or of this Part of this Act by the operator or driver; or
- (c) any other reasonable cause.

Section 52 of The Road Safety Act 2006 gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect when they were of the opinion that the interests of public safety required such action.

The Borough Council should only authorise hackney carriage and private hire licences when they were satisfied that the applicant was "fit and proper" to hold such a licence. The Panel should be aware that any matter could be taken into consideration when determining 'fit and proper'. Whilst there was no judicially approved test for fitness and propriety the Panel may find the following test useful:

'Would you (as a member of the Licensing & Appeals Board charged with the ability to authorise a combined driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or grand-daughter or any other person for whom you care, to get into a vehicle with this person alone?'

If the answer to this question was an unqualified 'yes', then the test was probably satisfied. If there were any doubts, then further consideration should be given as to whether the person was a fit and proper person to hold a Combined Driver's licence.

The Licensing Manager requested that the Panel consider the contents of the report, including any submissions put forward by the driver and dispose of the matters by using one of the following options:

- (a) In relation to the review of his combined drivers licence either:
 - i. Take no action;
 - ii. Issue a warning;
 - iii. Suspension;
 - iv. Revocation;
 - v. Any other action deemed appropriate.

- (b) In relation to the review of his Hackney Carriage (not private hire as stated in the report) vehicle licence either:
 - i. Take no action;
 - ii. Issue a warning;
 - iii. Suspension;

iv. Revocation.

The Panel was reminded that grounds for their decisions must be given as there was provision for appeal to the Magistrates' Court against those decisions.

There were no questions raised by the licensed driver or Members of the Panel.

The licensed driver presented his case and in doing so, apologised for appearing before the Panel as a result of the circumstances outlined. He explained that he had been driving a taxi since he was 18 years old and although he had a regular job, he mainly worked weekends as a taxi driver to supplement his income in order to be in a position to support his child. The driver outlined details in relation to the incident which had led to his conviction. He circulated a number of photographs for the Panel to view.

In response to questions from Members of the Panel, he confirmed what contact he had with the other person involved since the incident had occurred and explained that he had kept the licensing team informed at all times as the case developed.

In response to questions from the Licensing Manager, the driver referred to the two character references that he had submitted and outlined the content. He also further expanded on the details in connection with the incident.

The Licensing Manager summed up his case and reiterated that the hearing was to determine the suitability of the licensed driver to continue to hold a Combined Drivers Licence and Hackney Carriage Proprietor's Licence following a conviction before West Norfolk Magistrates' Court in June 2013. This was an isolated incident and there was no history of any complaints on file. The response from the Notifiable Occupations Scheme had outlined that there was no risk to the public. The Licensing Manager requested that the Panel consider the contents of the report, including any submissions put forward by the driver and dispose of the matters by using one of the following options:

- (a) In relation to the review of his combined drivers licence either:
 - i. Take no action;
 - ii. Issue a warning;
 - iii. Suspension;
 - iv. Revocation;
 - v. Any other action deemed appropriate.

- (b) In relation to the review of his Hackney Carriage (not private hire as stated in the report) vehicle licence either:
 - i. Take no action;
 - ii. Issue a warning;
 - iii. Suspension;
 - iv. Revocation.

The Panel was reminded that grounds for their decisions must be given as there was provision for appeal to the Magistrates' Court against those decisions.

The licensed driver had no further comments to add.

The Legal Advisor addressed the Panel and also reiterated that the Panel had to review the driver's continued suitability to hold a Combined Drivers Licence and Hackney Carriage Proprietor's Licence following a conviction. The Panel had to determine whether they deemed the driver to be "fit and proper" to continue to hold the licence(s). Members of the public also needed to be satisfied that they would be driven safely and in accordance with the law. She referred to the Licensing Manager's reports and the submission put forward by the driver. The Legal Advisor also advised that it was not for the Panel to look behind the Magistrates' Court's decision but that they needed to consider how long ago it had happened and the relevance of the conviction. In conclusion, the Legal Advisor advised that the Panel had to consider, when coming to their decision(s), the Borough Council's own Licensing Policy along with the Human Rights Act, which balanced a person's right to earn a living against the protection of the public.

The Chairman advised that the Panel would retire to consider their decision with the Legal Advisor and Senior Democratic Services Officer (for legal and administrative purposes only and neither would take any part in the decision making process).

The Panel retired and considered its decision in private. The Chairman read out the Panel's decision and reasons for their decision.

DECISION

The decision of the Panel was read out.

REASONS FOR DECISION

The reasons for the decision of the Panel were read out.

The meeting closed at 1.30pm