

**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 Thursday 19<sup>th</sup> September 2013 at 11.30am  
in the Committee Suite, King's Court, King's Lynn**

**PRESENT:**

Councillor D Tyler (Chairman), Councillor C Manning  
and Councillor Mrs S Smeaton

**OFFICERS PRESENT:**

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

**LEGAL ADVISOR:** - Cara Jordan

**OBSERVING:**

Councillor A Lawrence - Portfolio Holder for Community

**CASE NUMBER – LAB010/13**

**1. Apologies for Absence**

The driver confirmed that he had no objection to the Portfolio Holder for Community (which covered the licensing function) remaining in the room to observe the hearing. 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. Renewal of a Combined Driver's Licence and Review of a Hackney Carriage Proprietor's Licence**

The Chairman welcomed everyone to the meeting and stated that the purpose of the hearing was to consider a renewal of the driver's Combined Driver's Licence and a review of his Hackney Carriage Proprietor's Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing, accompanied by his representative who both introduced themselves.

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 hold a Combined Driver's Licence and Hackney Carriage Proprietor's Licence.

At the invitation of the Chairman, the Licensing Manager presented his report and in doing so questioned the driver as to whether he had received and read a copy of the Agenda. The driver confirmed he had received and read the Agenda, however he had failed to bring his copy along to the hearing. A copy was provided for the driver.

The Licensing Manager explained that the driver was first granted a Borough Council of King's Lynn & West Norfolk Combined Driver's Licence in September 2009. His previous driver's licence had expired in early September 2013. He also held a Hackney Carriage Vehicle Licence which would expire on the 2<sup>nd</sup> October 2013.

The report was for Panel Members to consider the renewal of the Combined Driver's Licence as a result of a road traffic collision. The Licensing Manager advised that, in addition, the Panel may also consider it appropriate to review the driver's continued suitability to hold a Hackney Carriage Proprietor's Licence.

The Licensing Manager outlined details of the road traffic collision to Members of the Panel. It was confirmed that the driver was not carrying any passengers at the time of the accident and no persons were injured. Three photographs that had been taken in relation to the incident had been attached to the report at Appendix One.

The Licensing Manager explained that in line with the Council's Licensing Conditions and Procedures, the driver had made the licensing team aware of the accident by email in May 2013, which had been attached to the report at Appendix Two. The actual owner of the vehicle and licence holder had disputed the version of events. On the 5<sup>th</sup> June 2013, following a request to Norfolk Constabulary, the Borough Council received information about the accident under Section 35(2) of the Data Protection Act 1998. This had been attached to the report at Appendix Three.

At the end of May, the Licensing Manager and Senior Licensing Enforcement Officer met with the driver (who was accompanied by his representative) and a

copy of the notes of that meeting had been attached to the report at Appendix Four. At the meeting, the driver had opted to surrender his driver's licence and a letter confirming this had been attached to the report at Appendix Five. Referring to the amount of miles that the driver's vehicle had clocked up, the Licensing Manager took the opportunity to question the driver's representative as to whether, in his opinion, this was an average amount of miles for a taxi driver.

The Licensing Manager referred to medical information which had been attached to the report at Appendix Six and Appendix Seven. He also outlined historical details on the driver's record.

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 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.

The Licensing Manager also advised that 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 advised that Condition 7.1.2 of the Hackney Carriage and Private Hire Licensing Procedures Conditions (30<sup>th</sup> June 2011) stated that holders of Combined Driver's Licences must be considered fit enough to meet at least the standards required for the grant of a Group 2 driving licence as recommended by the Driver Vehicle Licensing Agency". He also referred to Chapter 8 of the DVLA Guidance for Medical Practitioners (2013 Edition).

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

Renewal Application (Combined Driver's Licence):

- a) Grant the renewal application; or
- b) Refuse the renewal application;

Vehicle Licence (Hackney Carriage Proprietor's Licence)

- c) Take no action;
- d) Issue a warning;
- e) Suspension;
- f) Revocation.

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

There were no questions from either the driver (or his representative) or Members of the Panel.

The licensed driver's representative presented his case and explained that the driver had cooperated with the Council in that he had surrendered his licence. He had also sought medical advice and treatment and stated that his condition had improved albeit he was unable to provide any documentation to prove this. It was also confirmed that the DVLA had been informed by the driver of his medical condition and that they had not taken any action. Again, the driver could not provide any correspondence to confirm this fact.

In response to questions raised by the Licensing Manager, it was clarified that there was no suggestion that the condition was under control but that the hospital were satisfied that progress was being made. It was further confirmed that the DVLA had taken no action against the driver's driving licence. The Licensing Manager referred to the DVLA's "Guide to the current Medical Standards of Fitness to Drive 2013" explaining that in relation to this particular medical condition, there was a Group 1 Entitlement about the general public driving their vehicles and stipulated that "driving must cease until satisfactory control of symptoms has been attained". Group 2 related to professional drivers, such as taxi drivers which stipulated a more stringent test in that "driving must cease until satisfactory control of symptoms has been attained, with on-going compliance with treatment confirmed by consultant/specialist opinion. Regular, normally annual licensing review required".

The Licensing Manager referred to the notes of the meeting with officers (page 23) and questioned the driver in relation to the other accidents recorded on his file. The driver found it difficult to recollect some of the details in relation to these accidents.

In response to a further question from the Licensing Manager, the driver's representative confirmed that the notes taken at the meeting on 31<sup>st</sup> May (Appendix 4) were a true reflection of the meeting. The driver confirmed that he had attended and passed a National Driver Alertness Course as recommended.

The driver responded to questions raised by the Legal Advisor in relation to how many hours he worked and details about a previous accident that had happened in April 2013.

In response to questions raised by Members of the Panel, the driver confirmed that he had not received any documentation (i.e. certificate) in relation to attending and passing the National Driver Alertness Course. He confirmed that he felt a lot better after under taking medical treatment. He also confirmed that he had held a DVLA driving licence for approximately 30 years.

The Licensing Manager summed up the case and reiterated that the matter before the Panel was to consider the renewal of the driver's Combined Driver's Licence and Review of his Hackney Carriage Proprietor's Licence. He highlighted that the driver had voluntarily surrendered his licence but was still driving in a private capacity. He referred to the recent accident and highlighted that the key consideration was the issue of public safety. The Licensing Manager also reiterated the DVLA's medical guidance, in particular Group 2 for professional drivers.

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

Renewal Application (Combined Driver's Licence)

- a) Grant the renewal application; or
- b) Refuse the renewal application;

Vehicle Licence (Hackney Carriage Proprietor's Licence)

- c) Take no action;
- d) Issue a warning;
- e) Suspension;
- f) Revocation.

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

The licensed driver's representative summed up the driver's case and explained that he worked long hours because of his financial situation. He reiterated that the driver had cooperated with the Council in surrendering his licences and had also

sought medical advice and subsequent treatment. The driver had now been out of work for some three months and was struggling financially.

The Legal Advisor addressed the Panel and also reiterated that the Panel had to consider the renewal of the driver's Combined Driver's Licence and a review of his Hackney Carriage Proprietor's Licence. She advised that 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 also had to consider, when coming to their decision(s), the Human Rights Act, which balanced a person's right to earn a living against the protection of the public. 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 written evidence and the oral evidence that had been submitted at the hearing but highlighted that no documentation or correspondence was produced by the driver from either the hospital or DVLA.

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. On reconvening, the Legal Advisor confirmed that she had not offered any further legal advice to the Panel. 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 1.20pm**