

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 26th September 2013 at 9.30am
in the Card Room, Town Hall, Saturday Market Place, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor J Loveless
and Councillor C Sampson

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB011/13

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 Driver's Licence & Hackney Carriage Proprietors Licences

5.1 Introductions

The Chairman welcomed everyone to the meeting and stated that the purpose of the hearing was to consider a review of the driver's Combined Driver's Licence

and Hackney Carriage Proprietors Licences. He introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing. Two witnesses from Norfolk County Council's Travel & Transport Team (NCC Travel & Transport Team) were present and introduced themselves. They were accompanied by Marie Malt, Senior Licensing Enforcement Officer.

5.2 The Procedure

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 Licences. She explained that the hearing was confidential. The witnesses and the Senior Licensing Enforcement Officer left the hearing.

6. The Licensing Manager's Report/Questions

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver had been licensed to drive either a Hackney Carriage or Private Hire Vehicle for a number of years and his current Combined Driver's Licence expired at the end of November 2013. The driver also held several Hackney Carriage Vehicle Licenses which expired on various dates.

The report was for Members of the Licensing Panel to review the driver's continued suitability to hold the above licences following the receipt of a complaint from NCC Travel & Transport Team.

The Licensing Manager outlined the complaint that had been received and subsequent correspondence with the driver. The Licensing Manager called the two witnesses from NCC Travel & Transport Team (who were accompanied by the Senior Licensing Enforcement Officer) who responded to questions in relation to the complaint and their subsequent investigation. The witnesses also responded to questions from Members of the Panel. The witnesses left the hearing with the Senior Licensing Enforcement Officer.

The Licensing Manager continued presenting his report and outlined to the Panel a number of historical and other matters in relation to the driver as well as details on the driver's DVLA driving licence.

The Licensing Manager advised that under Section 60 of the Local Government (Miscellaneous Provisions) Act 1976 the Council has the authority to 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.

He also 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.

Section 52 of The Road Safety Act 2006 amended Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and gave licensing authorities the power to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect where 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 Panel were requested to consider the report, including any submissions put forward by the driver and dispose of the matters using the options below. The Licensing Manager highlighted that it was a review and not a renewal application (as incorrectly stated in the report).

Combined Driver's Licence:

- a) Take no action;
- b) Issue a warning;
- c) Suspension;
- d) Revocation

Vehicle Licences (Hackney Carriages)

- e) Take no action;
- f) Issue a warning;

- g) Suspension;
- h) 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 against those decisions.

The Licensing Manager responded to questions from Members of the Panel.

The Licensing Manager also responded to questions from the driver in relation to why the historical and other matters had been included in the report when in his view, they had already been dealt with. The Licensing Manager explained that under the Rehabilitation of Offenders Act 1974 after a defined rehabilitation period, certain criminal convictions became 'spent'. However, taxi drivers were exempt from this Act and all convictions could be taken into consideration when the Panel were determining whether the driver was fit and proper to continue to hold the licences. If this applied to convictions then it was not unreasonable for it to apply to other matters such as complaints etc. The Chairman took the opportunity to highlight to the driver that he would have an opportunity to present his case and further give his opinion on this matter to the Panel.

7. The Licensed Driver's Case/Questions

The licensed driver presented his case and explained to the Panel details in relation to his company and contractual arrangements. He also explained details in relation to the two specific contracts with Norfolk County Council. The licensed driver referred to the historical and other matters outlined in the report and reiterated that in his opinion that these had been dealt with and should have no bearing on the hearing. He also explained his financial situation to the Panel.

The licensed driver responded to a number of questions from the Licensing Manager who referred and circulated a document from the Registry Trust Limited. The driver also responded to a number of questions from Members of the Panel and the Legal Advisor.

8. Summing Up

8.1 Summing Up - The Licensing Manager

The Licensing Manager summed up his case and reiterated that the case before the Panel was to review the driver's Combined Driver's Licence and Hackney Carriage Proprietors Licences. He referred to the primary complaint which was from NCC Travel & Transport Team and the evidence given by the two witnesses. The Licensing Manager also referred to the evidence given by the driver and reiterated that any matter could be taken into consideration when the Panel were determining whether the driver was fit and proper to continue to hold the licences. He also advised the Panel that if they were minded to suspend or revoke the driver's Combined Driver's Licence, under Section 52 of The Road Safety Act it gave licensing authorities the power to do so with immediate effect where they were of the opinion that the interests of public safety required such action.

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

Combined Driver's Licence:

- a) Take no action;
- b) Issue a warning;
- c) Suspension;
- d) Revocation

Vehicle Licences (Hackney Carriages)

- e) Take no action;
- f) Issue a warning;
- g) Suspension;
- h) 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 against those decisions.

8.2 Summing Up - The Licensed Driver

The licensed driver summed up his case explaining to the Panel that he was a trustworthy character and had been driving in the trade for some 14 years without receiving any complaints. He requested that the Panel give consideration to his financial ability to support his family and the other three drivers that he currently employed. The driver acknowledged that "to certain extent he was in the wrong" but he was trying to put the matter right.

9 Legal Advice

The Legal Advisor addressed the Panel and also reiterated that the Panel had to be satisfied that the applicant was "fit and proper" to hold a Combined Driver's Licence and Hackney Carriage Proprietor's licences. She referred to the test outlined by the Licensing Manager, details of the most recent complaint from NCC Travel and Transport Team and the evidence that had been given at the hearing.

The Legal Advisor also advised that historical and other matters could be taken into consideration when coming to their determination but it was for the Panel determine how much weight they attached to such matters.

10. Determination

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 explained that she had offered no further legal advice but had assisted the Panel with the formulation of their reasons. 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