

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 Monday 27th January 2014 at 9.30am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor C Manning
and Councillor C Sampson

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

CASE NUMBER – LAB013/14

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

5.1 Introductions

The Chairman welcomed everyone to the meeting and stated that the purpose of the hearing was to consider a review of a driver's Combined Driver's Licence. He introduced the Panel, officers and the Legal Advisor. The licensed driver was

present at the hearing and was accompanied by a fellow member of the taxi trade (his representative).

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.

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 held a Borough Council of King's Lynn & West Norfolk Combined Driver's Licence since April 2008 and that their current licence expired at the end of April 2014.

The report was for Members of the Panel of the Licensing & Appeals Board to review their continued suitability to hold a Combined Driver's Licence as a result of them accruing 12 penalty points on their DVLA driving licence. Condition 7.7 of the Borough Council's Hackney Carriage & Private Hire Licensing Procedures & Conditions stated:

If a Driver accrues 9 or more points in a 3 year period on his/her DVLA driving licence, they will be required to appear before a Panel of the Licensing & Appeals Board in order for their continued suitability to hold a driver's licence to be assessed.

On the 10th October 2013, the driver advised the Licensing Team in writing that their DVLA driving licence had been endorsed with 3 points on the 4th October 2013. On the 11th October 2013, Senior Licensing Enforcement Officer Marie Malt wrote to the driver requesting further information including an explanation as to why licensing Condition 7.14 had not been complied with. Condition 7.14 of the Borough Council's Hackney Carriage and Private Hire Licensing Procedures & Conditions stated:

The driver shall notify the Borough Council in writing if he/she receives any summons, charge, conviction, caution, formal notice or fixed penalty notice within seven days of receiving such. The written notification should include the following details:

- *Offence / alleged offence;*
- *Date, place & time of offence/alleged offence;*
- *Whether acting as a hackney/private hire;*
- *If motoring offence:*
 - *whether paying passengers carried;*
 - *speed or alleged speed;*
 - *speed limit for road;*
 - *Punishment e.g. amount of fine, number of penalty points issued etc.*

A copy of the driver's letter of response which had been received on the 22nd October 2013 had been attached to the report at Appendix 1. Notwithstanding paragraph 3 of the letter from the driver, at the very least he should have notified the Borough Council in writing when they received their summons to attend Court.

The Licensing Manager outlined details which appeared on the driver's DVLA driving licence.

He also informed Members that the driver's suitability to hold a Combined Driver's Licence was considered before a Panel of the Licensing & Appeals Board in October 2012. At that time, the driver had accrued 9 penalty points on their DVLA licence. The Panel's decision was to suspend the Combined Driver's Licence held by the driver for a period of one week with immediate effect. Reasons for the decision were outlined by the Licensing Manager. A copy of the Agenda and Decision Sheet from the hearing had been attached to the report at Appendices 2 and 3.

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.

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 Licensing Manager reminded Members of the Panel that the reason for the licensing of hackney carriage and private hire drivers was that the driver was in a position of trust and responsibility for their passengers. Consequently, it was generally accepted that such professional drivers should have a standard of care and driving that exceeded that of a private motorist.

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 the 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.

There were no questions for the Licensing Manager from any party.

7. The Licensed Driver’s Case/Questions

The licensed driver’s representative presented the case and outlined the circumstances of the recent incident that had occurred. Location plans were also circulated to the Panel.

The licensed driver responded to a number of questions from the Licensing Manager and also apologised for failing to notify the Council as required.

The licensed driver also responded to questions from Members of the Panel and provided further clarification in relation to the incident.

8. Summing Up

8.1 Summing Up - The Licensing Manager

The Licensing Manager summed up his case and reiterated that the Panel were requested to consider the continued suitability of the driver to hold a Combined Driver’s Licence. He requested that the Panel consider the contents of the report, including any submissions put forward by the driver and dispose of the matter by using one of the following options:

- (a) Take no action;
- (b) Issue a warning;
- (c) Suspend their Combined Driver’s Licence;
- (d) Revoke their Combined Driver’s Licence; or
- (e) Any other action deemed appropriate which could include the requirement for the driver to undertake a Driver Standards Agency (DSA) test and/or the Borough Council’s Knowledge Test.

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

8.2 Summing Up - The Licensed Driver

The licensed driver’s representative summed up his case and explained that he would have no hesitation letting his small grandchild travel in a vehicle driven by the driver. He acknowledged that the driver had made a number of errors but was tempting to do the right thing.

9 Legal Advice

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. The Panel had to determine whether they deemed the driver to be "fit and proper" to continue to hold the licence. She referred to the options open to the Panel that had been outlined by the Licensing Manager.

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 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 10.35am