

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
held on Tuesday 5 August 2014 at 11.18am
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor A Lovett
and Councillor A White

OFFICERS PRESENT:

Rebecca Parker - Democratic Services Officer
Marie Malt - Senior Licensing Enforcement Officer

LEGAL ADVISOR: - Peter Cox

CASE NUMBER – LAB018/14

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 Members, officers and the Legal Advisor. The licensed driver was present at the hearing and introduced himself.

5.2 The Procedure

The Legal Advisor outlined the procedure that would be followed at the hearing.

6. The Senior Licensing Enforcement Officer's Report/Questions

At the invitation of the Chairman, the Senior Licensing Enforcement Officer presented her report and explained that the driver had held a Borough Council of King's Lynn & West Norfolk Driver's Licence for a number of years. His current Combined Driver's licence expired on the 31 August 2014.

The report was for Members of the Licensing & Appeals Board to review the driver's continued suitability to hold a combined driver's licence as a result of him accruing 12 penalty points on his DVLA driving licence. Condition 7.7 of the Borough Council's Hackney Carriage & Private Hire Licensing Procedures & conditions states:

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.

The Senior Licensing Enforcement Officer outlined the details on the driver's DVLA driving licence.

The Senior Licensing Enforcement Officer explained that the Borough Council records dated back to 1996 regarding the licence holder. Members were informed that the licence holder had not appeared before a Panel of the Licensing and Appeals Board on any previous occasions and there was no record of any complaints, Borough Council penalty points or warnings against him.

The Senior Licensing Enforcement Officer advised that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council may suspend or revoke or refuse to renew the licence of a driver of a hackney carriage or private hire vehicle 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 Act of 1847 or of the Act of 1976; 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 when they were of the opinion that the interests of public safety required such action.

The reason for the licensing of 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 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’.

The Senior Licensing Enforcement Officer 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 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.

There were no questions from the licensed driver or Members of the Panel for the Senior Licensing Enforcement Officer.

7. The Licensed Driver’s Case/Questions

The licensed driver presented his case. He outlined details of the convictions and explained that reasons why he had been convicted of failing to give information as to the identity of a driver and the particular extenuating circumstances that he hoped the Panel would take into account.

In response to a question from the Senior Licensing Enforcement Officer, the licensed driver explained that he had been a Hackney Carriage and Private Hire driver before regulations had come in to require drivers to be licensed which had been implemented in 1982.

In response to a question from the Senior Licensing Enforcement Officer the licensed driver provided details of the speeding offence in 2011. The second speeding offence in June 2013 was because the licensed driver was travelling at 34mph in a 30mph zone.

The licensed driver confirmed that he did undertake school contracts through an Operator.

In response to questions from Members of the Panel, the driver explained that if he was to lose his job he would have no financial income.

Councillor Lovett asked why the licensed driver had not been disqualified from driving because he had accumulated 12 DVLA Penalty Points. The licensed driver explained that it was because his wife had a medical condition which required him to drive her to and from hospital.

8. Summing Up

8.1 Summing Up - The Senior Licensing Enforcement Officer

The Senior Licensing Enforcement Officer summed up her case and referred to Condition 7.7 of the Borough Council's Hackney Carriage & Private Hire Licensing Procedures and Conditions which stated that if a driver accrued nine or more points on his DVLA licence they would appear before a Panel of the Licensing & Appeals Board.

The Senior Licensing Enforcement Officer reminded the Panel that the licensed driver had held a combined driver's licence since 1996 and possibly possibly as early as 1982. There had been no previous complaints, penalty points or warnings issued by the Council.

The Senior Licensing Enforcement Officer reminded Members of the Panel that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, it gave the Council the power to suspend or revoke a driver's licence for any reasonable cause. Section 52 of the Road Safety Act amended Section 61 and gave the power to suspend or revoke with immediate effect if it appeared that the interests of public safety required such action. The Senior Licensing Enforcement Officer advised that an explanation must be given as to why suspension or revocation was deemed to be with immediate effect.

The Senior Licensing Enforcement Officer referred to the "fit and proper" test.

The Senior Licensing Enforcement Officer 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

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 had no further comments to add.

9 Legal Advice

The Legal Advisor addressed the Panel and summarised the points that the Panel should take into account when making their decision. He reminded the Panel that the licensed driver had been brought before a Panel of the Licensing and Appeals Board because he had breached the 9 DVLA points barrier.

The Legal Advisor explained that public safety was the prime consideration to be taken into account and reminded the Panel that they needed to determine if the driver was a fit and proper person.

The Panel was reminded that they had heard the Senior Licensing Enforcement Officer's report and the licensed drivers' explanation of his convictions.

The Legal Advisor reminded the Panel that the driver had been licensed with the Council since at least 1996 and had no complaints against him.

The Legal Advisor explained that the licence expired on 31st August 2014 so any revocation or suspension could only last until the end of the current licence. The Legal Adviser reminded the Panel that under Section 52 of The Road Safety Act 2006 licensing authorities had the power to suspend or revoke a licence with immediate effect where they were of the opinion that the interests of public safety required such action.

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

10. Determination

The Chairman advised that the Panel would retire to consider their decision accompanied by the Legal Advisor and the 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 having regard to what it had heard and the requirements of the public interest. On reconvening, 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 11.56am