

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 28th May 2013 at 9.30am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor C J Crofts
and Councillor A Lovett

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Emma Duncan

OBSERVING:

Councillor A Lawrence - Portfolio Holder for Community

CASE NUMBER – LAB005/13

1. Exclusion of Press and Public

The driver confirmed that he had no objections to the Portfolio Holder for Community remaining in the room to observe the hearing.

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."

2. Review of Combined Drivers Licence and Hackney Carriage Vehicle Licence

The Chairman welcomed everyone to the meeting and introduced the Panel, officers and the Legal Advisor. The licensed driver was present at the hearing and introduced himself and confirmed that they would not be represented or be calling any witnesses. The witnesses, on behalf of the Borough Council were also present and introduced themselves.

The Legal Advisor outlined the procedure that would be followed at the hearing. The licensed driver confirmed that he understood the procedure and had no questions. The witnesses left the hearing.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver had held a licence to drive a hackney carriage or private hire vehicle for a number of years and his current licence expired in November 2013. The driver also held a hackney carriage vehicle licence which expired in November 2013.

The report was for Members of the Licensing & Appeals Board to review the driver's continued suitability to hold a combined drivers and hackney carriage vehicle licence following the receipt of two complaints regarding their driving, one which had occurred on 18th March 2013 and the other on 9th April 2013. The Licensing Manager outlined details of the two complaints to the Panel. He explained that on the 11th April 2013 Mrs Marie Malt, Senior Licensing Enforcement Officer wrote to the driver regarding the complaint inviting him to make written comments. A copy of Mrs Malt's letter had been attached to the report at Appendix 6 and a copy of the driver's response dated the 16th April 2013 had been attached at Appendix 7.

In response to a question raised by Councillor C J Crofts, the Licensing Manager clarified details to a reference made in the letter Mrs Marie Malt had written to the driver in relation to previous correspondence regarding another complaint. He clarified that this had no bearing on the hearing and was unrelated to the driver.

The Licensing Manager called his first witness in relation to the complaint that had been received about an incident that had occurred on 18th March 2013. The witness confirmed that the statement consisting of one page that they had made on the 15th April 2013 was a true reflection of the events that they had witnessed on 18th March 2013. They gave a short account of these events. The witness also confirmed that they did not recognise the driver but did take a note of their Hackney Carriage Plate number. They did not notice whether there were any passengers in the vehicle. With the aid of maps which were circulated to Members of the Panel, the witnesses further clarified details in relation to the incident.

There were no questions from the licensed driver or Members of the Panel. The witness left the hearing.

The Licensing Manager called his second witness in relation to the complaint that had been received about the incident that had occurred on 9th April 2013. The witness confirmed that the statement, consisting of two pages (including a map), that they had made on the 10th April 2013 was a true reflection of the events that they had witnessed on 9th April 2013. They gave a short account of these events and provided further clarification referring to the map that had been attached to the report at page 12.

The witness responded to a question from the licensed driver and further questions from Members of the Panel. The witness left the hearing.

The Licensing Manager questioned in light of the driver not directly challenging the evidence given by the second witness and it being confirmation of that evidence, whether it was necessary to call the third witness. The Panel confirmed that

they were happy to be proceed on this basis and that they had had the opportunity to read the statement provided by the third witness.

The driver confirmed that they had no objection to Mrs Marie Malt attending and observing the hearing at this stage.

The Licensing Manager referred back to his report and outlined the history in relation to previous complaints received in relation to the driver, one being in August 2008 and the other in February 2009.

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 Borough Council should only authorise hackney carriage and private hire licences when they were satisfied that the applicant was a “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.

In response to a question raised by Councillor Lovett in relation to the two complaints on file from August 2008 and February 2009, the Licensing Manager explained that the driver had not appeared before a Panel of the Licensing and Appeals Board previously. Not all complaints generated the need to hold a hearing but did remain on the driver's file, including any subsequent response(s) received from the driver.

The licensed driver presented his case initially referring back to the complaint from August 2008. The Chairman advised that the hearing was specifically in relation to the complaints that had been received in March and April of this year. The licensed driver outlined details in relation to the complaints from his perspective.

In response to questions from the Licensing Manager, the driver explained that he could not recall why they had made a particular remark in his letter to Mrs Marie Malt dated 2nd April 2013. He clarified that he was not carrying passengers at the time of the first incident and explained that in his opinion the road was clear and that there was sufficient space to make the manoeuvre (60 metres). The Licensing Manager referred to the Highway Code stating that it did not stipulate a defined amount of space but stated that "do not overtake where you might come into conflict with other road users, for example, approaching or at a road junction on either side of the road or when a road user is indicating right". The driver also provided clarification in relation to their letter that had been submitted dated 16th April 2013 and responded to further questions in relation to the incident that had occurred on 9th April 2013. The driver confirmed approximately how miles he drove per annum.

In response to questions from the Panel, the licensed driver explained that in relation to the second incident, he was on his way home and was not driving to collect any passengers. He also clarified details as to a remark made in his letter of 16th April 2013 in relation to what the Chairman deemed to be a reference to a "conspiracy theory" but confirmed that they had no specific evidence to back up this claim.

The driver also submitted some documents in support of his case which the Chairman confirmed would be considered when the Panel retired.

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 Vehicle Licence. He referred to the two complaints that had been received and the subsequent evidence given by both the witnesses and driver and advised the Panel that they had to be satisfied that the driver was "fit and proper" to hold a licence.

He therefore requested that the Panel consider the contents of this report, including any submissions put forward by the driver and dispose of the matter by using the following options:

- (a) In relation to the review of their combined drivers licence either:
 - i. Take no action;
 - ii. Issue a warning;

- iii. Suspension;
 - iv. Revocation; and
- (b) In relation to the review of their private hire vehicle licence either:
- v. Take no action;
 - vi. Issue a warning;
 - vii. Suspension;
 - viii. Revocation.

The Licensing Manager advised that the Panel could also consider any other options that they deemed to be suitable, for example, the Driving Standards Agency test. He also 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 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 Vehicle Licence following complaints made against them and determine whether they deemed them to be "fit and proper" to hold a licence. She referred to the Licensing Manager's report and the statement and evidence given by the witnesses which had not been challenged by the driver. The Legal Advisor also referred to the test previously outlined by the Licensing Manager in terms of whether, as a Member of the Licensing & Appeals Board, the Panel would allow a relative or any person for whom they cared for, to get into a vehicle with the driver alone.

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 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 11.15am