

**BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK**

**LICENSING AND APPEALS BOARD – PANEL HEARING**

**Minutes of a Meeting of a Panel on  
Tuesday 18<sup>th</sup> September 2012 at 11.45am  
in the Committee Suite, King's Court, Chapel Street, King's Lynn**

**PRESENT:**

Councillor Garry Sandell (Chairman), Councillor Chris Crofts  
and Councillor Colin Sampson

**OFFICERS PRESENT:**

Rachael Edwards - Senior Democratic Services Officer  
John Gilbraith - Licensing Manager  
Marie Malt - Licensing Enforcement Officer

**LEGAL ADVISOR:** - Emma Duncan

**CASE NUMBER – LAB004/12**

**1. 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."

**2. Review of Combined Drivers Licence & Hackney Carriage Proprietor's 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 was represented by a Solicitor. They were accompanied by their partner (who would take no part in the hearing).

The Legal Advisor outlined the procedure that would be followed at the hearing. She highlighted need for the hearing to be conducted in a respectful manner. There were no questions in relation to the procedure.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the driver was first granted a Combined Driver's Licence in 2009 and that their current licence would expire in November 2012. The driver also held a Hackney Carriage Proprietors Licence which would expire in October 2012.

The report had been prepared for Panel Members to review the driver's continued suitability to hold the above mentioned licences for permitting five passengers into a private hire vehicle licensed to carry a maximum of four passengers.

The Licensing Manager stated that in March 2012, Licensing Enforcement Officer Marie Malt and a Detective Constable from Norfolk Constabulary were shown CCTV footage from the 31<sup>st</sup> August 2011 details of which were outlined to Members.

The Licensing Manager explained that since February 2007, all hackney carriage and private hire vehicle licence records have been registered by the Borough Council's Licensing Team on a Lalpac computer database. The database showed that since this date there has only been one vehicle licensed by the Borough Council of the make and model viewed in the CCTV footage. The vehicle was licensed to carry a maximum of 4 passengers.

Carrying more than the permitted number of passengers invalidated the motor insurance and a copy of the certificate of motor insurance had been attached to the report at Appendix 1. Section 6 of the certificate detailed:

*'Limitations as to use: Private Hire*

*'Use for social domestic.....Use by authorised person(s) named above for the carriage of passengers or goods for hire and reward by prior arrangement only, providing such use complies with the laws and regulations of the appropriate Licensing Authority'.*

The Licensing Manager outlined further details in relation to the case and explained that the driver had been informed of the incident and invited to view the CCTV footage. The driver had subsequently emailed to request to view the CCTV footage and to query the validity of the action, given the timescales involved.

The Licensing Manager explained that the licensed driver had appeared before a Panel of the Licensing & Appeals Board on two previous occasions, details of which were outlined to the Panel. It was highlighted that the incident in August 2011 was whilst the driver was still under warning.

The Licensing Manager advised that under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, the Borough Council had the authority to 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 had the authority to suspend, revoke or refuse to renew a 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 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 drivers licence with immediate effect when they were of the opinion that the interests of public safety required such action.

Section 48 of The Local Government (Miscellaneous Provisions) Act 1976 provided the requirement for a private hire vehicle to have in force a policy of insurance or such security to comply with the requirements of Part VI of the Road Traffic Act 1988.

The Licensing Manager reminded the Panel that the Borough Council should only licence a combined Hackney Carriage and Private Hire Drivers licence when they were satisfied that the applicant was "fit and proper" to hold such a licence. All matters were relevant to deciding whether this was the case or not. The reason for the licensing of Private Hire and Hackney Carriage drivers was that the driver was in a position of trust and responsibility for his passengers. The driver had appeared before a Panel twice in the last year and was now appearing again for loading more than the licensed, insured amount of passengers into a licensed private hire vehicle. Members were requested to consider the seriousness of the matter when making their decision.

The Licensing Manager explained that the CCTV footage was available for Members to review if they so wished, however, he explained the key question was whether the licensed driver accepted that he had permitted five passengers into a private hire vehicle licensed to carry a maximum of four passengers. The driver confirmed that he accepted that he had. The Panel therefore decided not to view the footage.

The Licensing Manager requested that the Panel consider the matter, including any submissions put forward by the driver and dispose of the matter in one or more of the following ways:

- a) Taking no action;
- b) Issue a warning in relation to drivers or vehicle licence, or both;
- c) Suspension of his drivers or vehicle licence, or both;
- d) Revocation of his drivers or vehicle licence, or both.

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 specific questions from the licensed driver's representative but he referred to page 4 in the report (Section 7 & 8) which stipulated that the incident had occurred on 31<sup>st</sup> August 2012 which was an error. It was in fact 31<sup>st</sup> August 2011. This was acknowledged by the Licensing Manager.

The licensed driver's representative presented his case and explained that the driver had admitted that he had permitted more passengers into his vehicle than it was licensed to carry. He explained further circumstances surrounding the incident. It was also explained the impact on the driver if his licence was revoked. There had not been any complaints about the driver in the last year and he was considered to be a very valuable member of the team.

The licensed driver's representative responded to a number of questions from the Licensing Manager and Members of the Panel.

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 Driver's and Hackney Carriage Proprietor's Licence. He referred to the incident that had occurred on the evening of 31<sup>st</sup> August 2011 when the driver had permitted five passengers into a private hire vehicle licensed to carry a maximum of four passengers, which had also invalidated their motor insurance.

The licensed driver's representative summed up their case and explained the driver was truly sorry for the incident which had been unintentional. They were a valued member of the team and had a family to support.

The Legal Advisor addressed the Panel and referred them to page 5 of the report which outlined the powers available to the Panel. The driver had admitted the offence. The Panel had to determine how serious the incident had been and take into consideration that the driver had appeared before a Panel on two previous occasions.

The Chairman advised that the Panel would retire to consider their decision, with the Legal Advisor and Senior Democratic Services Officer (for administrative purposes) only. On returning to the room, the Legal Advisor would announce any advice she had given in closed session.

The Panel retired and considered its decision in private. On returning, the Legal Advisor confirmed that she had assisted with the formulation of the wording for the Panel's reasons.

## **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 12.45pm**