

CANNOCK CHASE COUNCIL
MINUTES OF THE MEETING OF THE
LICENSING AND PUBLIC PROTECTION COMMITTEE
10.00 A.M., TUESDAY 28 JUNE, 2011
IN THE CIVIC CENTRE, BEECROFT ROAD, CANNOCK

PART 1

PRESENT: Councillors

Snape, P.A. (Chairman)

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|---------------|-------------------|
| Allen, F.W.C. | Fisher, P.A. |
| Bernard, J.D. | Grice, Mrs. D. |
| Burnett, J. | Todd, Mrs. D.M. |
| Easton, R. | Williams, Mrs. P. |

1. Apologies

An apology for absence was received from Councillor Mrs. S.M. Cartwright (Vice-Chairman).

2. Declarations of Interests of Members in Contracts and Other Matters and Restriction on Voting by Members

| Member | Interest | Type |
|-------------------|--|-------------|
| Grice, Mrs. D. | Draft Policy on Street Trading – Member of Hednesford Town Council | Personal |
| Todd, Mrs. D.M. | Draft Policy on Street Trading – Member of Hednesford Town Council | Personal |
| Williams, Mrs. P. | Draft Policy on Street Trading – Member of Rugeley Town Council | Personal |

3. Minutes

RESOLVED:

That the Minutes of the Licensing and Public Protection Committee held on 19 May, 2011 be approved as a correct record.

4. Draft Policy on Street Trading

Consideration was given to the Report of the Head of Environmental Health (Enclosure 4.1 – 4.20 of the Official Minutes of the Council).

Members were provided with copies of the responses received in connection with the two consultations that had been undertaken. It was explained that these responses would be

included in the report when the Policy was considered by full Council.

A Member considered that the charge for selling products in a lay-by was quite expensive. The Senior Licensing Officer confirmed that the charge would be in line with the neighbouring Authorities of South Staffs and Lichfield District Councils at £14.00 per day. He commented that the consultation had revealed that one fee was not workable and it was more appropriate to introduce a three-tier policy depending on where a trader wished to trade.

A Member expressed concern that the Policy may restrict competition. The Senior Licensing Officers explained that the Policy would control street trading and competition was encouraged.

Members had concern regarding the safety of pedestrians should traders' vehicles be allowed access into the town centres. It was requested that consideration be given to imposing a time restriction on vehicles leaving the town centres. It was suggested that there should be no vehicle movement between the hours of 10.00am and 4.00pm. The Senior Licensing Officer explained that he would liaise with the Legal Department regarding Members concerns with a view to modifying the Policy. The Environmental Protection Manager referred Members to Enclosure 4.18 – Conditions (2) and (15) the current draft conditions which related to times and potential movement of vehicles.

RESOLVED:

- (A) That the draft Policy on Street Trading be endorsed.
- (B) That the proposal to consent all streets for the purpose of street trading be supported.
- (C) That the draft Policy on Street Trading be submitted to a meeting of full Council for adoption and consideration be given to imposing a time restriction on vehicles leaving the town centres so that there was no vehicle movement between the hours of 10.00am and 4.00pm.

5. Draft Policy on Sex Establishments

Consideration was given to the Report of the Head of Environmental Health (Enclosure 5.1 – 5.42 of the Official Minutes of the Council).

Members were advised that the draft Policy would go out to consultation on 1 July for a 7/8 week period.

RESOLVED:

That the draft Policy be consulted upon and amended as appropriate after due consideration of comments received within the consultation period.

(Councillor J. Burnett requested that his name be recorded as having abstained from voting on this report).

6. Exclusion of the Public

RESOLVED:

That the public be excluded from the remainder of the meeting because of the likely disclosure of exempt information as defined in Paragraph 2, Part 1, Schedule 12A, Local Government Act 1972 (as amended).

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PART 2

7. Application for a Hackney Carriage Proprietors' Licence

Consideration was given to the Not for Publication Report of the Head of Environmental Health (Enclosure 7.1 – 7.18 of the Official Minutes of the Council).

The Applicant attended the Hearing to present his case.

The Chairman then invited all those present to introduce themselves.

The Officer of the Licensing Authority presented the Council's case by taking the Committee through the report outlining the relevant issues for consideration. He advised that the application for a Hackney Carriage Vehicle Licence had been made by the Applicant on 26 May, 2011. The vehicle was first registered in the UK on 1 June 2004 and was now 7 years old. The Applicant was aware of the Council's age policy and that an exemption applied for "exceptional vehicles". The vehicle was first licensed by the Authority as a Hackney Carriage Vehicle on 8 September 2009 and would continue to be licensed until 28 June, 2011. The vehicle was previously presented to the Committee on 29 June 2010 when Members agreed to license the vehicle having decided that it was "exceptional" although it was considered to be a borderline case at the time.

The vehicle was mechanically tested on 9 June 2011 and found to be mechanically satisfactory; however there were two advisory comments on the pass sheet. The test papers are included at Annex 5 of the report. The Applicant was advised that the vehicle could not be considered to be exceptional if it had advisory comments about its mechanical fitness on the pass sheet. The Applicant was advised that should he wish to pursue the application he would need to pay the re-test fee and present the vehicle for re-inspection. The Applicant refused to pay the re-test fee and the vehicle was not therefore re-inspected. The Applicant advised that the required remedial work had been carried out but he was refusing to pay the re-test fee. The Council has no evidence that the remedial work has been completed. A summary of the Licensing Enforcement Officers examination is also attached at Annex 7 to the report.

Members were asked to consider whether they wished to inspect the vehicle given that the Applicant had not paid the re-test fee.

The Applicant along with the Officers were asked to leave the meeting whilst the Committee considered whether they wished to inspect the vehicle. Members discussed this issue and the Applicant and Officers then returned to the meeting.

The Chairman explained that Members had discussed whether they wished to inspect the vehicle given the circumstances. It had been decided that should the Applicant have the necessary paperwork to confirm the advisory comments had been undertaken, the Committee would inspect

the vehicle. The Applicant provided the Committee with the necessary paperwork and this was circulated to Members. Additionally, he provided the Committee with the invoices confirming the work that had been undertaken on the vehicle throughout the year. The Committee then examined the Applicant's vehicle. The Applicant and Members of the Committee were then afforded the opportunity to ask questions of the Officer of the Licensing Authority. There being none, the Applicant was given the opportunity to present his case.

The Applicant stated that he considered the vehicle to be in a really good condition. As it was considered borderline at the meeting last year he had ensured the vehicle was improved over the year. It was a very economical vehicle; it was comfortable to ride and drive and was an excellent workhorse. The vehicle was used for a variety of purposes and he had not received any complaints about its condition. He suggested that the vehicle would be good for another two years and asked Members to consider whether they would be happy travelling in it.

The Applicant stated that the vehicle was built as a passenger carrying vehicle (to carry up to 16 passengers), however, the vehicle had been converted so that it could only carry 8 passengers. He considered that the vehicle should be allowed to be licensed for 10 years in the same way that a purpose built hackney carriage was allowed. The Applicant was advised that this was not a matter for consideration at the meeting today.

Members of the Committee were then afforded the opportunity to ask questions of the Applicant. A Member asked the Applicant to confirm his address as two addresses were given in the paperwork. The Applicant confirmed his address and stated that the other address was where his girlfriend and children lived.

Another Member asked the Applicant to confirm why he was refusing to pay the re-test fee. The Applicant explained that the vehicle had passed the mechanical examination and the notes on the test sheet were advisory comments only. They were not classed as emergency repairs; the mechanic was advising that they be fixed at some point. He had done them immediately as the vehicle had already been booked in (prior to the mechanical examination) to have the dent pulled out and painted. The Chairman advised that should the Applicant wish the vehicle to be classed as "exceptional" there cannot be advisory comments about its mechanical fitness on the pass sheet. The Senior Licensing Officer confirmed that the Head of Environmental Health had been consulted in this instance and it had been agreed that for the vehicle to be classed as "exceptional" it cannot have advisory comments. Although the Applicant had indicated the advisory comments had been undertaken, the Council's mechanic would need to determine if the work had been carried out to the correct standards and if the vehicle was fit for purpose. The Council's requirement for licensing a vehicle as a hackney carriage vehicle was greater than the requirement for an MOT.

Another Member asked whether the Applicant would be prepared to pay the re-test fee. The Applicant indicated that the re-test fee was not listed in the Council's booklet. The two advisory comments would take a few minutes of the mechanics time and he was not prepared to pay the full re-test fee of £57.50. A Member asked whether he would pay the re-test fee if the Committee considered the vehicle to be cosmetically acceptable. The Applicant considered he was being held to ransom and would have to pay it.

The Officer of the Licensing Authority was then afforded the opportunity to ask questions of the Applicant. The Environmental Protection Manager asked why the Applicant had not improved the vehicle to the standard it was at today prior to the inspection at the Depot on 9 June. The Applicant explained that he worked long hours and had to pick the right time to have off so that he did not lose too much work/money. She commented that the Applicant had indicated the vehicle was a "workhorse" and asked for confirmation of the annual mileage. The Applicant confirmed the vehicle had undertaken 17,000 since August last year. The Officer commented that the vehicle's

mileage was now 118,000 and asked whether he considered the vehicle remained reliable. The Applicant stated that the vehicle had never broken down and he had it serviced regularly. The Officer then asked the Applicant to confirm the proportion of work undertaken by this vehicle in comparison to his other licensed vehicle which was a saloon type car. The Applicant confirmed that the majority of work was undertaken by the other licensed vehicle which did approximately 40,000 miles per year. However, he explained that he could earn as much in this vehicle per year as in the car. The Officer then referred to the vehicle previously being able to carry 16 passengers and asked whether the Applicant had taken the seats out. The Applicant confirmed he had put them in storage so they could be put back in if he wished to sell it. The Senior Licensing Officer explained that the vehicle had been seen being driven with more than 8 seats in it and a letter had been sent to the Applicant asking him to ensure any additional capacity or seating must be permanently removed. The Applicant stated that Officers had asked him to weld the bolt holes so that the additional seating could not be put back. However, he considered that this would compromise the safety of the vehicle. Should he decide to sell it as a 16 seater he would have to redrill the holes but they would not be to the same standard. He confirmed he had a large family, and, on occasions, he had put the extra seating back in to use it for family purposes.

The Officer from the Licensing Authority was afforded the opportunity to sum up the Council's case. She stated that the Committee had agreed to inspect the vehicle even though the Applicant had not yet paid the re-test fee. The Committee had viewed the work carried out on the vehicle over recent weeks. She commented that the Council had not tested the vehicle to ensure the two advisory comments had been undertaken properly. Members must be satisfied that the public were safe and until it had been re-tested the Council could not confirm it was mechanically safe. Members needed to consider whether the vehicle was a credit to the Council and not just good for its age.

The Applicant was then asked to sum up his case. He advised that he had improved the vehicle as asked of him last year and considered the vehicle was at its best possible condition today. He confirmed that he would pay the re-test fee if it was the Committee's wish and it was the only thing stopping him getting a licence. However, he did not feel this was morally right.

The Committee then deliberated in private accompanied by the Council's Legal Adviser and Secretary to the Committee.

The Applicant along with the Officers were called back in to clarify a matter. The Officer was asked to confirm where it was stated in the rules that a re-test fee had to be paid when there were advisory notes on the pass certificate. The Senior Licensing Officer confirmed that the re-test fee was listed on the fees and charges and it was not included in the booklet. He confirmed that the only way the vehicle could be re-tested to ensure the advisory comments had been carried out was to pay for an appointment at the Depot for the vehicle to be tested. The Licensing Unit would be charged for this appointment and would therefore have to claim it back off the Applicant. The Head of Environmental Health's view was that the vehicle should not be classed as "exceptional" with advisory comments on the pass sheet and therefore it had to be re-tested. The Environmental Protection Manager confirmed that the booklet was intended to be read in conjunction with licensing a Hackney Carriage Vehicle and not for when there was a claim that a vehicle was exceptional. The Committee was advised that common sense should be applied as the Council had to ensure that the work had been done correctly. Therefore, the vehicle needed to be re-inspected and this test had to be paid for.

Following this, the Committee then deliberated in private accompanied by the Council's Legal Adviser and Secretary to the Committee.

RESOLVED:

That, having regard to all the circumstances, the application for a Hackney Carriage Proprietor's Licence be approved for a period of 12 months as the Committee was satisfied that the vehicle was an "exceptional vehicle" as defined by the Council's policy for the age restriction of Hackney Carriage Vehicles, subject to the following two conditions:-

- (i) That the vehicle be re-tested by the Council's Hawks Green Depot at the Applicant's expense in order to satisfy the Inspector that the advisory comments had been carried out to a satisfactory standard, and
- (ii) That the cut in the headlining above the driver's seat be repaired.

(The Committee recognised that access to the electrics behind the headlining would be required and agreed that a zipper, velcro or press stud fastening would be acceptable).

REASONS FOR DECISION:

1. The Committee carefully considered all relevant factors, issues and the responses given by the Applicant. Due regard was also given to the Council's Policy on the age restrictions for the licensing of Hackney Carriage Vehicles and also to the powers given to licensing authorities under Section 37 of the Town Police Clauses Act 1847 and the Local Government (Miscellaneous Provisions) Act 1976.
2. The Committee were afforded the opportunity of inspecting the vehicle both inside and out and of perusing the service/maintenance records. It was generally considered that the vehicle had continued to be well maintained despite its age, although again this was still a borderline case.
3. The Committee therefore agreed that the Applicant's vehicle satisfies the criterion as an "exceptional vehicle" and that it should therefore be licensed for a further 12 months, but subject to the two conditions as detailed above being met first. Once these conditions have been met then the Licensing Officers may issue the licence using their delegated powers.

8. Hackney Carriage/Private Hire Driver

Consideration was given to the Not for Publication Report of the Head of Environmental Health (Enclosure 8.1 – 8.17 of the Official Minutes of the Council).

The Licence Holder attended the Hearing to present his case.

The Chairman then invited all those present to introduce themselves.

The Officer of the Licensing Authority presented the Council's case by taking the Committee through the report outlining the relevant issues for consideration. It was explained that the Licensing Unit were made aware that the Licence Holder had received a formal police caution on 22 May 2011 as a result of him stealing £500 from his previous employer whilst being employed as a taxi driver. Members were advised that the Licence Holder had repaid the stolen money to his employer. The Officer outlined several other matters relating to the Licence Holder that Members may wish to take into consideration in determining his fitness and propriety to hold a Hackney Carriage/Private Hire Driver's Licence. This included his failure to notify the Licensing Unit of a Fixed Penalty Notice he had received for speeding, his failure to notify that his DVLA licence had been revoked in April 2011 and his failure to notify that his Hackney Carriage Vehicle had been scrapped. The Committee was asked to determine whether the Licence Holder remained a fit

and proper person to hold a Hackney Carriage/Private Hire Drivers' Licence and if so, whether any additional action was necessary in light of the issues raised.

The Licence Holder along with Members were offered to the opportunity to ask questions of the Officer. There being none the Licence Holder was asked to put his case.

The Licence Holder advised that he had been a licensed taxi driver since 1997; he had never had any trouble with the public and got on well with them. He had never over charged passengers and had in fact reduced fares in the past to help passengers.

He commented that he had been paying back some of the money each week; however, his employer had decided he wanted the whole amount of £500 immediately. He therefore had to make arrangements to take out a loan, however, before this was arranged he received a visit from the Police. It took a couple of weeks to arrange the loan and he then paid the money back to his employer. He had never been given a receipt for this. He was now living with a woman who had four children and should he lose his job he feared they would have to split up as she couldn't afford to keep him and the children. He confirmed that he had always provided letters to the Council regarding any incidents and these had been handed in at the reception desk. He advised that his Hackney Carriage Vehicle had been scrapped; it was at Cannock Auto Salvage, he had reported this to the DVLA and the plates had been returned to the Council. He hoped the Committee would be lenient with him, he considered he was a fit and proper person to hold a licence and had experienced no problems in the 14 years he had been licensed as a taxi driver.

Members of the Committee were then afforded the opportunity to ask questions of the Licence Holder. A Member asked the Licence Holder to explain why he took the money. He advised that he had a lot of bills to pay and the rising fuel costs were not helping. He admitted he had done wrong but had assumed he could pay back the money quicker than he actually could. He was working 6/7 days a week to pay back the loan.

The Officer of the Licensing Authority was then offered the opportunity to ask questions of the Licence Holder. The Senior Licensing Officer asked the Licence Holder to confirm what happened to the licensed Hackney Carriage Vehicle that was scrapped. He confirmed that the crank shaft had broken which would have cost £1000 to repair. He therefore decided to scrap the vehicle. He confirmed that the vehicle was an 05 plate.

The Council's Legal Adviser asked the Licence Holder to confirm whether he was dismissed from his previous employment. He confirmed he left of his own accord.

The Environmental Protection Manager asked the Licence Holder to explain the circumstances when his DVLA Licence had been revoked and he had no entitlement to drive. He explained that he had received a speeding fine and had sent his licence to Staffordshire Police to have the penalty points added. However, Staffordshire Police had not sent his licence onto the DVLA. The matter had been resolved by the Senior Licensing Officer when he visited the Licence Holder's home and his entitlement to drive had been reinstated.

The Licence Holder was asked why he failed to notify the Council that he had received a caution from the Police as a result of him stealing £500 from his employer. He explained that nobody had told him he had to report the caution to the Council. The Police had been involved and were happy that the money had been paid back.

The Officer explained that the Licence Holder should have informed the Council of any endorsements on his licence and that the caution should also have been reported. The Licence Holder advised that he had always informed the Council of any endorsements; however, he thought the caution was different.

The Officer asked whether he considered the caution to be more serious than receiving 3 penalty points. The Licence Holder stated that it was probably a bit more serious.

The Officer asked the Licence Holder whether he had worked for other taxi companies before leaving the company he had stole from. The Licence Holder stated that he had worked for many taxi companies and left because he thought he could make more money elsewhere. He current employer was the best employer he had ever worked for. He confirmed he had not been sacked from his previous employment; he had left of his own accord. He had been keeping back some of the takings in order to pay his debts off. He had been trying to pay it back whilst he continued to work for them and had owned up to what he had done.

The Officer of the Licensing Authority was given an opportunity to sum up the Council's case. The Environmental Protection Manager stated that the matter was rather complicated; the Licence Holder had confirmed he had stolen £500 from his employer; he had tried to pay it back but got caught and had received a caution from the Police. The Committee was asked to consider whether the Licence Holder remained a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence. The Senior Licensing Officer stated that the DVLA had changed their policy and a person now only had 28 days to send a licence off to get points added. The DVLA would send two letters to confirm a licence had been revoked. The Licence Holder had denied receiving any notification from the DVLA and had written to them asking for confirmation of any letters that had been sent. However, to date the DVLA had not responded. If these letters had been sent to the Licence Holder he would have knowingly driven without a licence.

The Licence Holder was then afforded the opportunity to sum up his case. He sought confirmation of who Mr. Toy was. It was confirmed that he was the Chairman of the Taxi Trade Association. The Licence Holder stated that he needed to keep his taxi licence as he had a girlfriend with four children to look after. He confirmed he lived with his mother but regularly visited his girlfriend. He got on well with the public and it had been over 30 years since he had been in trouble with the Police. His previous employer wouldn't give him enough time to pay back the money he had taken.

Following this, the Committee then deliberated in private accompanied by the Council's Legal Adviser and Secretary to the Committee.

RESOLVED:

That, having regard to all the circumstances and the submissions made, the Licence Holder's Hackney Carriage/Private Hire Drivers' Licence be revoked forthwith as the Committee did not consider he was a fit and proper person to hold such a Licence.

REASONS FOR DECISION:

Committee has carefully considered all relevant factors, issues and the responses given by Licence Holder. Due regard was also given to the Council's licence conditions which are issued to its taxi drivers who operate within the district.

Under Section 61 of the Local Government (Miscellaneous Provisions) Act 1976, a Licensing Authority may suspend or revoke a Hackney Carriage/Private Hire Driver's Licence if it is satisfied that the Licence Holder is no longer a fit and proper person to hold such a licence.

A taxi driver is someone who is in a position of trust. The Licence Holder acted dishonestly when he knowingly stole the £500 from his previous employer, even if he did have every intention of repaying the money. The Committee takes a very dim view of what the Licence Holder did and

believes that public confidence would be diminished if he was allowed to continue to be licensed by this Authority.

By not notifying the Licensing Unit of his speeding conviction, or of his DVLA licence being temporarily revoked, or of the fact he had scrapped his vehicle, the Licence Holder had clearly failed to adhere to the conditions of his licence. Again, these incidents were of great concern to the Committee as they demonstrated that the Licence Holder was not a fit and proper person to hold a licence.

CHAIRMAN

(The meeting closed at 11.00 a.m.)