

CANNOCK CHASE COUNCIL
MINUTES OF THE MEETING OF THE
LICENSING AND PUBLIC PROTECTION COMMITTEE
10.00 A.M., TUESDAY 12 MAY 2009
IN THE CIVIC CENTRE, BEECROFT ROAD, CANNOCK
PART 1

PRESENT: Councillors

Bennett, K. L. (Chairman)
Williams, Mrs. P. (Vice-Chairman)

Allen, F.W.C. Holder, M. J.
Ansell, Mrs. P.A. Todd, Mrs. D. M.
Burnett, J.

(Apologies for absence were received from Councillors I. R. Carr, M. R. Green and R. G. Meaden).

19. Minutes

RESOLVED:

That the Minutes of the meeting held on 23 February 2009 be approved as a correct record.

20 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 I, Schedule 12A, Local Government Act 1972.

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PART 2

21. Referral by Head of Environmental Health of Hackney Carriage Driver

Consideration was given to the Not for Publication Report of the Head of Environmental Health (Enclosure 5.1 – 5.7 of the Official Minutes of the Council).

The driver attended the meeting to present his case, together with his representative.

The Chairman invited all those present to introduce themselves.

The Officer presented the Council's case by taking the Committee through the report outlining the relevant issues for consideration. He advised that the driver had been convicted of an offence at Wolverhampton Crown Court on 25 February 2009 and his Hackney Carriage/Private Hire Drivers' Licence had subsequently been suspended and remained so. The Court on 6 April 2009 had sentenced the driver to undertake 150 hours of Community Service and pay £1,000 in court costs.

Members were asked to determine whether the driver remained a fit and proper person to hold a Hackney Carriage/Private Hire Drivers' Licence.

When afforded the opportunity to ask questions of the Officer, the driver and his representative indicated that they had no questions.

Members of the Committee were then afforded the opportunity of asking questions of the Officer who indicated that they had no questions.

The driver was then asked to present his case. Members were informed that the driver had a number of references to support his case which had not been circulated prior to the meeting. In view of this additional information the Committee agreed that the referral would be reheard at a later date.

RESOLVED

That the referral be reheard by the Licensing & Public Protection Committee at a date to be arranged.

22. Referral by Head of Environmental Health of Hackney Carriage Driver

Consideration was given to the Not for Publication Report of the Head of Environmental Health (Enclosure 6.1 – 6.9 of the Official Minutes of the Council).

The driver attended the meeting to present his case, together with his representative.

The Chairman invited all those present to introduce themselves.

The Officer presented the Council's case by taking the Committee through the report outlining the relevant issues for consideration. He advised that the driver had repeatedly come to the attention of authorised officers for breaching the conditions of his Hackney Carriage/Private Hire Drivers' Licence and in the last twelve months had been suspended from driving on two separate occasions. On 27 February 2009 the driver had been furnished with a letter warning him that should he breach the conditions of his licence again he would be referred to the Committee.

On 8 April 2009 the driver was noted by two authorised officer not to be wearing his driver's badge. The driver had explained that the badge had broken and was not wearable and produced it from within the vehicle

On 28 April 2008 the driver was observed by an authorised officer to be driving without sufficient care and attention and had been furnished with a letter reminding him that public safety was of paramount importance.

In February 2009 the driver had serve a four day suspension for failing to pick up a passenger at 4.00 am to take him to an airport, which had resulted in the passenger losing a holiday.

Members were asked to consider whether the driver remained a fit and proper person to hold a Hackney Carriage / Private Hire Drivers' Licence in view of the number of offences, although minor, which were of concern to officers.

The driver (or his representative) was then afforded the opportunity to ask questions of the Officer. His representative enquired why the Officer had used the allegation 'without sufficient care and attention' rather than 'due care and attention'. The Officer advised that this was the wording normally used by the Police and as the Officer did not have the same ability to take action, different wording had been used to distinguish between the two. The driver had been observed by the Officer through his rear view mirror braking sharply at a roundabout and then again when the Officer was making a left turn. It was reported that the driver had since spoken to the passenger he was carrying at that time who could not remember the incidents and that he had made no comment on his driving at that time. The driver had braked sharply as the car in front of him had braked and he was unsure of the reason why.

Members of the Committee were then afforded the opportunity to ask questions of the Officer. He explained that no action had been taken other than the warning letter being sent to the driver relating to concerns regarding his driving. The driver had attended the office to discuss the incidents relating to the driver's badge not being worn. It was explained that Officers followed a list of appropriate suspension guidelines based on the severity of incidents. It was also reported that there was a Police camera near to where one of the driving incidents had taken place.

The driver (or his representative) was then afforded the opportunity to put his case in the presence of the Officer of the Licensing Authority.

The following written statement was circulated to Members:-

'MY STATEMENT OF DEFENCE

You will see on my records four alleged breached of licensing conditions and I shall respond to them in turn:

1) 21st April 2008

I was found not to be wearing my badge. I acknowledge my error, accept that wearing my badge is a requirement of law (Section 54 of the Local Government (Miscellaneous Provisions) Act 1976) and served a 24 hour suspension accordingly. I feel I paid the appropriate penalty for this offence.

2) 28th April 2008

Mr. O'Meara claims I was driving with insufficient care and attention. I disagree with this statement.

At the time of the alleged offence he was driving in front of me on the Pye Green Road and was caused to brake, Being behind him I was not able to see the cause of his braking if the hazard or potential hazard had been something immediately in front of him, I saw only his brake lights.

I braked hard in anticipation of this unseen hazard and during the time of braking my vehicle was no closer than one car length from that of Mr. O'Meara.

I was carrying a passenger who at the time did not believe that I had acted with insufficient care. Unfortunately, more than one year after, he had little or no recollection of the event, so I can only conclude that it was not sufficiently memorable or of significance to him.

I believe that this does beg the question of how Mr. O'Meara could possibly see what I was doing behind him in his rear view mirror in such detail as would be required to give accurate testimony at the same time as affording appropriate attention to the road ahead of him.

3) I failed to take a passenger to the airport and as a result they lost their holiday. I was so very sorry for this that before the Licensing Authority even became involved in the matter I offered compensation to the customer in the form of cash and a free airport transfer in the future which they accepted. I served a four day suspension for this and can assure you that any issues of procedure there may have existed prior to my failure to pick up the passenger have been addressed and this error will not be repeated.

Following these above offences (alleged and with insufficient evidence with regard to the second one above, in my view) the Licensing Authority agreed to grant me renewal of my licence for another year but warned me that any further offences would result in a Committee hearing and this brings me to the final alleged offence:

4) 6th April 2009

I was found not to be wearing my badge but on this occasion I feel I had an appropriate excuse as permitted by the law – Local Government (Miscellaneous Provisions) Act 1976, Section 54 (2).

(a) A driver shall at all times when acting in accordance with the driver's licence granted to him

wear such badge in a position and manner as to be **plainly and distinctly visible**

(b) If any person **without reasonable excuse** contravenes the provisions of this subsection, he shall be guilty of an offence.

As I bent into my vehicle to afford my passenger reasonable assistance with their luggage as is required by the conditions of my licence, my badge became caught in the handles of one of the shopping bags and broke away from the lanyard around my neck and dropped to the ground.

I retrieved the badge and being unable to re-attach it to the lanyard around my neck at this time; I placed it on the dashboard in a manner to be plainly and distinctly visible to all passengers inside the vehicle. I agree and accept that in this location I was in breach of the letter of the legislation above, but my actions were fully within its intended spirit of assuring public safety in that I was still identifiable to any passengers as a licensed driver.

Moreover, any and all alternative actions at my disposal would have left me technically in breach of one piece of legislation or another. By driving the vehicle away even without passengers I would still have been acting in accordance with the driver's licence and so would still have needed to wear the badge.

Had I instead left the vehicle in Morrison's car park in order to go and effect a repair to my badge I would have been in breach of both the licensing conditions and Section 62 of the Town Police Clauses act 1847 by leaving my vehicle *unattended in any street or at any public place of resort*.

The badge breaking away from the lanyard at the top is a common fault I'd like to bring to the attention of this Committee and for this reason I felt that it was unnecessary to lose any work time attempting repair to the badge immediately given that it was still visible to any passengers in its position on the dashboard until the end of my shift.

I was later seen on the taxi rank by Mr. O'Meara not to be wearing my badge but rather than attempting to ascertain whether my badge was at least visible to passengers on ingress to the vehicle, he simply demanded that I hand it to him, which I did.

I feel that I am a fit and proper person to be a licensed Hackney Carriage / Private Hire Driver in this district and that in this particular instance that has resulted in this hearing taking place, I feel that I at least made the appropriate effort to address the issue of public safety to the best of my ability at the time.

I therefore hope that you will on this occasion not suspend or revoke my licence and take into account also that I have three dependents, my partner and two young children to take care of.'

The driver's representative informed the Committee that with regard to the airport incident, the driver was very sorry and had offered compensation of £100 towards the loss of the holiday and the use of his taxi to any airport free of charge. The compensation had been accepted.

Members of the Committee were then afforded the opportunity to ask questions of the driver (or representative).

Members were informed that the person let down by the taxi firm had contacted the Licensing Authority to seek advice on this issue and the Officer had telephoned the taxi firm regarding

this matter. It was explained that a change in the administration of airport bookings had taken place. The passengers were now given the driver's contact details and the drivers contacted them the night before the airport transfer was to take place. The error occurred through an oversight between the driver and his office. The driver wrongly believed when being handed a piece of paper that he had put in his pocket without looking at that it contained the passengers details. He had been unable to contact his office when realising the error, due to it not having a 24 hour telephone service.

The Officer from the Licensing Authority was then afforded the opportunity to ask questions of the driver. He enquired whether the driver considered the compensation offered to the member of the public who had lost his holiday mitigated the problem. The driver explained that he had taken responsibility for his actions and offered compensation through his own freewill. Procedures had changed due to the problem that had occurred.

The Officer then summed up the Council's case. He informed the Committee that it was a series of incidents that had led to the application coming before them, the driver failing to wear his badge on a number of occasions, which was vital in safeguarding members of the public, and the failure in picking up a passenger to take to the airport. It was reported that the majority of drivers did not have a problem with their badges.

The driver's representative was then afforded the opportunity to sum up his case. He informed the Committee that there was a problem with badges breaking and that the driver had placed his badge where it was clearly visible in his vehicle. He considered that the driver was a fit and proper person to hold a Hackney Carriage/Private Driver's Licence.

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

RESOLVED:

That having carefully considered the submissions made by the driver and his representative and taking into account the licensing regulations concerning public safety, the driver's Hackney Carriage/Private Hire Driver's Licence should be endorsed with a condition that remains suspended for six months from the date of the decision as long as no further breaches of the licensing regulations occur. Should a breach occur within that period a suspension of the licence for 28 days shall be imposed.

Reasons for the Decision

The Committee agreed that the driver had definitely breached the provisions of section 54 of the Local Government (Miscellaneous Provisions) Act 1954, by failing to wear his drivers badge at all times. Furthermore based on his testimony, his statement in defence and the explanations provided coupled with the two suspensions he had served, the Committee was firmly of the view that he had failed to recognise the issue of public safety as customers had to be able to identify a driver by referring to his badge before they entered a vehicle and not after entering.

The Committee also noted that in the course of the meeting it had observed that the Council, its licensing and the licensing regulations were accepted by the driver at face value, which should not be the case particularly where it concerned his livelihood and the welfare and confidence of the wider public.

On the issue of the failed holiday booking, the Committee recognised that this incident had lead to a number of positive changes in the firm for which the driver drove, but that in its opinion the firm had a degree of culpability in the way this incident had occurred. Moreover it was clear that there were facts which had not been put to it in explanation such as the financial loss suffered by the customers and ultimately whether the compensation had covered the actual financial loss suffered.

The Committee had not been fully convinced of the driver's explanations as he had conveniently said nothing about how long it took him to get to the customers and why he had not checked the details he had been provided. Moreover the fact that there had been no contact numbers for the customer to contact either him or his cab office, meant that there were serious breaches in the way and manner that bookings were dealt with.

Accordingly, the Committee decided that although the driver could be deemed a fit and proper person to hold a Hackney Carriage/ Private Hire Driver's Licence, reasonable evidence of breaches of the Councils policy and Conditions and the Licensing Regulations had taken place on several occasions, for which he had already served two periods of suspension.

The Committee indicated that the evidence provided showed an increasing number of breaches over time, such that it resolved that his License should be endorsed with a condition to remain suspended for a period of 6 months from the date of this decision, as long as no further breaches of the Licensing regulations occur.

However in the event that any of the licensing regulations are breached in this period, a suspension of 28 days shall be imposed.

The Committee sees this as a reasonable and proportional decision on the grounds that the driver would have cause to reflect on the purposes of the Licensing regulations and amend his conduct accordingly

23. Hackney Carriage/Private Hire Driver's Licence

(Prior to consideration of this application Councillors M. J. Holder and J. Burnett left the meeting)

Consideration was given to the Not for Publication Report of the Head of Environmental Health (Enclosure 7.1 – 7.19 of the Official Minutes of the Council).

The Applicant attended the meeting to present his case.

The Chairman invited all those present to introduce themselves.

The Officer presented the Council's case by taking the Committee through the report outlining the relevant issues for consideration. It was reported that the applicant had a significant number of spent convictions which had been committed between 1988 and 1992 which had resulted in him being imprisoned and disqualified from driving on a number of occasions. Officers had, therefore, been unable to grant the applicant with a Hackney Carriage/Private Hire Drivers Licence.

The applicant along with Members were then afforded the opportunity to ask questions of the Officer, there being none the applicant was then afforded the opportunity to present his case.

The applicant explained that although his previous criminal record was not good, for the last 17 years he had turned his life around and stayed out of trouble and he now had two children. He had been 17 years old when his convictions had occurred which resulted in him being imprisoned. He thanked the Officers from the Licensing Authority for the advice he had received.

Members of the Committee were then afforded the opportunity to ask questions of the applicant. He informed Members that he had been in care for 6 years following the break up of his parent's marriage and his mother remarriage.

The Officer of the Licensing Authority was then afforded the opportunity to ask questions of the applicant. There being none, the applicant was then given the opportunity to sum up his case. He informed the Committee that he had nothing further to add.

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

RESOLVED:

That having carefully considered the submissions made by the applicant and the Licensing Officer, that a Hackney Carriage/Private Hire Drivers Licence be granted for a period of 12 months, subject to a condition being attached that the Licence be reviewed after six months of its issue. In the event that there have been breaches of the Licensing Regulations then the application will be brought back to the Committee for consideration.

Reasons for the Decision

The Committee agreed that the facts and evidence they had heard from the applicant indicated that he was aware of how concerning his conviction record was. Nevertheless they were all spent convictions and he appeared to have straightened himself out in that no new offences had been committed.

The Committee also commented upon the eloquence and simplicity with which he had put his case and his appearance which indicated the seriousness with which he took the present proceedings. However despite the admirable steps taken by the applicant the Committee wanted to afford him this chance whilst imposing an appropriate condition to deal with the wider issue of public confidence and safety.

Upon considering all the evidence before it, and upon listening to the applicant and the Licensing Officer, the Committee came to a decision that it considered the applicant to be a fit and proper person to hold a Hackney Carriage /Private Hire Drivers License. The Committee also believed that it would be proportional and reasonable to grant the applicant a Hackney Carriage/Private Hire Drivers License for 12 months subject to a condition that the license be reviewed within six months of the date of issue by the Licensing Officer, as long as there had been no breaches of the Licensing Regulations.

In the event that there had, been a breach of the Licensing Regulations, then upon review the application shall be referred directly to the Licensing & Public Protection Committee of Cannock Chase District Council.

CHAIRMAN

