

Medway Council
**Meeting of Licensing Sub-Committee of Licensing and
Safety Committee**

Friday, 13 October 2017

2.30pm to 7.15pm

Record of the meeting

Subject to approval as an accurate record at the next meeting of this committee

Present: Councillors: Bhutia, Mrs Diane Chambers (Chairman), Fearn, Kemp and McDonald

In Attendance: Mr A, Appellant
Mr R Chishti MP, Mr A's representative
Mr K, Appellant
Mr J, Mr K's witness
Mr W, Appellant
Charlie Bennett, Licensing and Enforcement Officer
Laura Caiels, Legal Advisor
Franco De Fazio, Licensing and Enforcement Officer
Mandy Francis, Principal Licensing and Enforcement Officer
Stephen Platt, Democratic Services Officer

382 Apologies for absence

Apologies were received from Councillors Carr and Godwin.

383 Record of meeting

The record of the meeting held on 8 September 2017 was agreed and signed as correct.

384 Urgent matters by reason of special circumstances

There were none.

385 Declarations of disclosable pecuniary interests and other interests

Disclosable pecuniary interests

There were none.

Other interests

There were none.

386 Exclusion of the press and public

The press and public were excluded from the meeting during consideration of agenda items 6, 7 and 8 because consideration of this matter in public would disclose information falling within paragraphs 1, 2 and 5 of Part 1 of Schedule 12A of the Local Government Act 1972 as specified in agenda item 5 (Exclusion of Press and Public) and, in all the circumstances of the case, the Sub-Committee considered that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

387 Appeal against penalty points issued and review of Hackney Carriage Driver Licence

Discussion:

The Principal Licensing and Enforcement Officer requested that the Sub-Committee consider the information and evidence in her report, determine Mr A's appeal against suspension of his Hackney Carriage Driver Licence and subsequently consider the continuance of the licence and determine what action should be taken.

The Principal Licensing and Enforcement Officer advised that, following receipt of a complaint from a member of the public regarding the condition of Mr A's licenced hackney carriage vehicle, further enquiries had been made and Mr A had been requested to present the vehicle at the Council's offices for inspection. This request was not complied with and the vehicle had been suspended. The vehicle was then presented for inspection and a number of defects were found. As a result a defect notice had been issued and the suspension remained in place.

The Licensing Unit then received complaints that a second vehicle licenced by Mr A was being used for hire and reward without displaying door signs. Following an inspection of this vehicle, defect and suspension notices were issued and Mr A was issued with penalty points in respect of both vehicles. In total, eight points were issued in respect of the first vehicle and 16 points in respect of the second vehicle. Mr A surrendered his vehicle licence for the first vehicle and submitted an appeal against the issuing of penalty points, submitting evidence and character references to support his appeal. The second vehicle was subsequently re-inspected and, as the defects had been corrected, the vehicle suspension had been lifted

In presenting her report, the Principal Licensing and Enforcement Officer highlighted the very high standard that Medway Council expected from its licensed drivers and advised members of the Sub-Committee of the options available to them.

During questioning of the Principal Licensing and Enforcement Officer and in presenting his detailed representations on Mr A's behalf, Mr A's representative questioned the process for issuing penalty points, particularly where a vehicle had already been suspended. He drew Members attention to the defect notices which did not indicate that points were to be awarded. The Licensing and Enforcement Officer responded that the defect notice had indicated that the issuing of points was still under consideration at the point that it was issued. Mr A's representative also noted that confirmation of the points issued for the first vehicle was not sent within the required timescale. He also gave mitigating factors regarding Mr A's failure to present his first vehicle for inspection when requested. He concluded that Mr A was of good character and treated his customers well. Questions were then put to Mr A and his representative before both parties were asked to sum up.

Both parties to the hearing left the room and the Sub-Committee considered the matter in private.

Decision:

After careful consideration of the written evidence and the representations made at the meeting by the Principal Licensing and Enforcement Officer and Mr A through his representative, the Sub-Committee:

- a) was satisfied that Mr A was a fit and proper person to continue to hold a Hackney Carriage Driver Licence; and
- b) agreed to amend the number of penalty points issued to reflect the main issues of the case. The following penalty points were therefore issued for breaches of the Hackney Carriage and Private Hire Licensing Policy:

Four points – seat belt not working – first vehicle

Three points – fire extinguisher not serviced – second vehicle

Four points – no door signs displayed – second vehicle.

388 Appeal against penalty points issued and review of Hackney Carriage Driver Licence

Discussion:

The Principal Licensing and Enforcement Officer requested that the Sub-Committee consider the information and evidence in her report, determine Mr K's appeal against suspension of his Hackney Carriage Driver Licence and subsequently consider the continuance of the licence and determine what action should be taken.

The Principal Licensing and Enforcement Officer advised that one of the Council's Licensing Enforcement Officers had witnessed Mr K drive through red traffic lights and approached Mr K to discuss the incident, advising him to attend the Council offices on a particular day. He later saw Mr K again and repeated this request, explaining the matter could result in the issuing of

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penalty points. In response Mr K had become agitated and this incident was witnessed by another Licensing and Enforcement Officer of the Council.

The Licensing Unit had subsequently received an email from a licensed hackney carriage driver in support of Mr K who then submitted an appeal against the decision to issue him with penalty points and a further letter detailing his account of events. Character references for Mr K were also received by the Licensing Unit.

In presenting her report, the Principal Licensing and Enforcement Officer highlighted the very high standard that Medway Council expected from its licensed drivers and advised members of the Sub-Committee of the options available to them.

During questioning of the Principal Licensing and Enforcement Officer and the Enforcement Officers and in presenting his case, Mr K challenged the version of events set out in the officer report and appendices, stating his belief that he would not have been able to stop safely at the traffic lights. He questioned the way in which Licensing and Enforcement Officers had dealt with the later incident and was concerned that they had not shown their Council identification badges. He denied being agitated or aggressive, stating that this was not in his nature. Mr K said that he had held a licence for many years and had never before had an enforcement issue. The Principal Licensing and Enforcement Officer confirmed that there was nothing of this nature recorded on Mr K's file. Mr K questioned why the Licensing and Enforcement Officer had approached him for a second time and circulated a document giving his version of this incident. Mr J, who had witnessed the incident, also addressed the Sub-Committee in support of Mr K. Mr K sought clarification on the Council's dress code and was advised that officers dressed appropriately for the duties they were performing.

Both parties were then asked to sum up before leaving the room and the Sub-Committee considered the matter in private.

Decision:

After careful consideration of the written evidence and the representations made at the meeting by the Principal Licensing and Enforcement Officer, the Licensing and Enforcement Officers and Mr K, the Sub-Committee:

- a) was satisfied that Mr K was a fit and proper person to continue to hold a Hackney Carriage Driver Licence; and
- b) accepted the officer evidence that Mr K had driven through a red light and confirmed the eight penalty points issued for this breach of the Hackney Carriage and Private Hire Licensing Policy.

389 Appeal against suspension of Hackney Carriage Driver Licence:

The Principal Licensing and Enforcement Officer requested that the Sub-Committee consider the information and evidence in her report and determine Mr W's appeal.

The Principal Licensing and Enforcement Officer advised that, following information received from Kent Police, Mr W's Hackney Carriage Driver Licence had been suspended following discussion between the Council's licensing and legal teams.

The Principal Licensing and Enforcement Officer further advised that Mr W was no longer on bail with conditions but was under investigation by Kent Police and enquiries were ongoing. During this time Mr W's licence remained suspended. Mr W had appealed against this suspension on the basis that the police had lifted his bail conditions. During questioning, the Principal Licensing and Enforcement Officer advised that there was no indication how long these investigations would be ongoing.

Mr W addressed the Sub-Committee and expressed his desire to continue working as he was not guilty of any offence. During questioning Mr W explained how he was able to continue to work under the bail conditions before his licence had been suspended.

Both parties were then asked to sum up before leaving the room and the Sub-Committee considered the matter in private.

Decision:

After careful consideration of the written evidence and the representations made at the meeting by the Principal Licensing and Enforcement Officer and , Mr W, the Sub-Committee:

- a) agreed that, in the interests of public safety, the suspension of Mr W's Hackney Carriage Driver Licence would remain in place until the police investigations had concluded; and
- b) requested that the Principal Licensing and Enforcement Officer contact Kent Police to make them aware that Mr W is not working.

Chairman

Date:

Stephen Platt, Democratic Services Officer

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