

NORTHAMPTON BOROUGH COUNCIL

LICENSING COMMITTEE

Tuesday, 24 April 2018

PRESENT: Councillor Sargeant (Deputy Chair – in the Chair); Councillors Haque, Ansell, Beardsworth, T Eales and Walker

OFFICERS: Eleanor Flannery (Licensing Enforcement Officer)
Jason Toyne (Licensing Enforcement Officer)
Clive Tobin (Litigation and Licensing Solicitor)
Ed Bostock (Democratic Services Officer)

1. APOLOGIES

Apologies were received from Councillors Flavell, Culbard and Graystone.

2. MINUTES

The minutes of the meeting held on 28th March 2018 were agreed and signed by the Chair.

3. DEPUTATIONS / PUBLIC ADDRESSES

There were none.

4. DECLARATIONS OF INTEREST

Councillor Haque declared a personal and non-pecuniary interest in item 9 by virtue of knowing the driver and advised that he would leave the room whilst the review took place.

Councillor Eales declared a personal and non-pecuniary interest in item 7 and advised that she would leave the room whilst the review took place.

5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE CONSIDERED

There were none.

6. EXCLUSION OF PUBLIC AND PRESS

The Chair moved that the Public and Press be excluded from the remainder of the meeting on the grounds that there was likely to be disclosure to them of such categories of exempt information as defined by Section 100A(4) of the Local Government Act 1972 as listed against such items of business by reference to the paragraphs 1 and 2 of Schedule 12A to such Act.

The Motion was Carried.

7. REVIEW OF COMBINED DRIVER'S LICENCE

The Licensing Enforcement Officer outlined the circumstances as set out in the report. The Committee heard that on 29th January a complaint was received from a passenger of the driver which stated that he was using a mobile phone whilst driving as well as driving erratically. As a result of the complaint, the driver was interviewed under caution at the Guildhall and previous complaints were recapped including dangerous and inconsiderate driving, using his mobile phone whilst driving, aggressive behaviour, refusing to take passengers, poor service, overcharging for journeys and illegally plying for hire and no insurance.

The driver addressed the Committee and denied that on 29th January he had used his mobile phone whilst driving. He stated that he had been forced to take a longer route to his passenger's destination due to traffic and noted to Members that he had been a taxi driver for 11 years with no accidents. He further stated that drunk, racist people caused a problem for him on some weekends.

In response to questions, the driver explained that since his hearing before the Licensing Committee on 10th July 2015 and subsequent suspension, he always kept his mobile phone on loudspeaker whilst driving. He also stated that sometimes communication was a barrier between his clients and himself but that passenger safety was his priority at all times. He refuted claims that he was aggressive and a poor driver.

At this juncture the Solicitor explained to Members their options with regard to possible sanctions, that case law allowed hearsay evidence to be considered when reviewing a driver's conduct and that they needed to decide whether they were satisfied that the incidents alleged had occurred and any explanation given by the driver.

Members retired to make a decision.

The meeting reconvened at 18:42.

RESOLVED:

The Committee decided that the driver was, on a balance of probabilities, not a fit and proper person to continue to be licensed as a Private Hire and Hackney Carriage Driver and that there was reasonable cause to revoke his licence.

8. REVIEW OF COMBINED DRIVER'S LICENCE

The Licensing Enforcement Officer outlined the circumstances as set out in the report. The Committee were informed that on 25th January 2018, Licensing Enforcement Officers observed the driver smoking a cigarette inside of his Hackney Carriage. He was advised that under Section 7 of the Health Act 2006, it is an offence to smoke in a smoke-free place. The driver was subsequently issued with a fixed-penalty notice for which payment was received on 16th February 2018. It was noted that he had previously come to the notice of the Licensing Department for smoking inside his vehicle, his vehicle not being fit for purpose which resulted in a 28 day suspension notice, an arrest for failing to provide his details to Police following a major traffic incident, plying for hire and allegations of overcharging for a journey.

The driver addressed the Committee and stated that no complaints had been lodged against him and that his only fallibility was smoking. He apologised for his indiscretion and explained that his wife and mother had both been unwell for a considerable period of time, and that the stress of these events had caused him to smoke inside his vehicle.

In response to questions, the driver explained that whilst he normally smoked outside of his vehicle, it had been late at night when he had been spotted smoking inside of it, stating that people out drinking at that time of night tended to be temperamental.

With regard to his arrest, the driver explained that he felt that he was being treated unfairly by Police officers so left the scene, however, he subsequently went to the Police Station of his own accord, apologised for his previous behaviour and gave his details, with no further action being taken against him.

Regarding a fixed-penalty notice he received after he was seen smoking inside his vehicle

at a petrol station, the driver stated that he did not recall the event.

At this juncture the Solicitor explained to Members their options with regard to possible sanctions, that case law allowed hearsay evidence to be considered when reviewing a driver's conduct and that they needed to decide whether they were satisfied that the incidents alleged had occurred and any explanation given by the driver. He also stated that the personal circumstances of a driver can be considered only to the extent that they explain or excuse the driver's behaviour.

Members retired to make a decision.

The meeting reconvened at 19:28.

RESOLVED:

The Committee decided that on a balance of probabilities, the driver's conduct had fallen below the standards expected of a person who is fit and proper person to be licensed as a Private Hire and Hackney Carriage driver and that there was reasonable cause to suspend the licences for a period of 4 months.

9. REVIEW OF PRIVATE HIRE DRIVER'S LICENCE

The Licensing Enforcement Officer outlined the circumstances as set out in the report. The Committee heard that on 8th January 2018, a complaint was received against the driver by another Hackney driver. The complainer alleged that during the night before, the driver poached a group of passengers before he had finished negotiating a price for a journey to Long Buckby. He had also been caught illegally plying for hire on 4th February 2018.

The driver also failed to keep his medical and DBS certificates up to date, despite a reminder posted to his address.

The driver had previously come to the attention of the Licensing Department for illegally plying for hire and attended a Safety Awareness Course on 26th October 2014. Following an arrest and revocation of his licence, he attended a Licensing Committee on 26th April 2016 to determine his fitness and propriety; the Committee found that on a balance of probabilities, he was a fit and proper person and was granted a Private Hire Driver's licence at that time.

The driver brought a colleague along to represent him. A letter of recommendation was circulated amongst Members.

The driver's colleague stated that the driver's DBS had since been renewed for the purpose of carrying out school runs for Northamptonshire County Council.

Regarding the 7th January 2018 incident, the driver stated that the job had been booked by the passengers, after they had been quoted a higher price by another Hackney driver they called his company and booked the journey.

Regarding the plying for hire incident that took place on 4th February the driver explained that he was approximately 30 minutes late picking up his customers and assumed that the group of people he spoke to were the group that booked the journey.

In response to a question relating to record keeping, the driver's colleague stated that he had spoken to the night operator and that frequent checks were carried out to ensure that records were kept diligently.

At this juncture the Solicitor explained to Members their options with regard to possible sanctions, that case law allowed hearsay evidence to be considered when reviewing a driver's conduct and that they needed to decide whether they were satisfied that the incidents alleged had occurred along with any explanation given by the driver.

The Committee retired to make a decision.

The meeting reconvened at 20:20.

RESOLVED:

The Committee allowed the driver until 30th May 2018 to provide the Licensing Department with his up-to-date DBS and medical certificate. Should this time lapse without him having supplied the DBS Disclosure and medical certificate, the Private Hire Driver's licence would be suspended until such a time as the required documentation had been received.

10. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Enforcement Officer outlined the circumstances as set out in the report. The Committee heard that on 13th June 2017, the applicant applied for a Private Hire Driver's licence and did not disclose any cautions or convictions. Following the submission of a DBS certificate, a caution for possession of cannabis was disclosed. The applicant was contacted and advised that his application would not be accepted, however, he requested that his case be heard by the Licensing Committee as he stated he had made a genuine mistake on his application.

The applicant addressed the Committee and apologised for not disclosing the caution on his application, stating that he did not realise it remained on his record. He explained that the drugs were the property of a person he had driven to the train station. He produced a letter written by the person to whom the drugs belonged, advising that this was the case, and the letter was circulated amongst Members and officers.

The applicant stated that he was currently a qualified forklift driver as well as a delivery driver and held an SIA badge but due to changes in his circumstances, was looking for alternate employment and the freedom of being a self-employed Private Hire Driver appealed to him.

At this juncture the Solicitor explained to Members that they needed to determine whether the applicant was a fit and proper person to hold a private hire drivers licence and could consider the applicant's explanation in relation to the offence when deciding whether he was fit and proper. He also referred to paragraph (d) of the Council's Guidelines on Relevance of Convictions which state that an applicant should have been free of conviction for at least 3 years following conviction for a serious drug related offence however, members should bear in mind that the caution was toward the lower end of the range of drug offences.

Members retired to make a decision.

The meeting reconvened at 20:50.

RESOLVED:

The Committee decided that on a balance of probabilities, the applicant was a fit and proper person to be licensed as a Private Hire Driver and granted the application.

The meeting concluded at 8:52 pm