

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Thursday, 9 June 2011 at 10.00 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mr R.W. Duffield
Mrs L.H. Monument (Chairman)
Mr S.G. Bambridge

Mrs S Armes
Mr M A Wassell

In Attendance

Mr Philip Mason
Jane Osborne
Tiffany Bentley
Gilbert Addison

- Solicitor
- Committee Officer
- Senior Licensing Officer
- Tree & Countryside Officer

7/11 MINUTES

**Determination of a Revocation of a Hackney Carriage/Private Hire Drivers
Licence (Minute No. 5/11)**

It was noted that the wording in the Resolutions numbered 2i) – 2vi) should be changed to read the word, 'he' instead of the word 'they'.

Minutes

Subject to the above, the Minutes of the meeting held on 16 March 2011 were confirmed as a correct record and signed by the Chairman.

8/11 APOLOGIES

An apology for absence was received from Mr I Sherwood.

9/11 DECLARATION OF INTEREST

No declarations were made.

10/11 HEARING PROCEDURES

Noted.

11/11 EXCLUSION OF PRESS AND PUBLIC (AGENDA ITEMS 8 & 9)

RESOLVED that under Section 100(a)(4) of the local Government Act 1972, the press and the public be excluded from the meeting for the following item of business on the grounds that it involves the disclosure of exempt information as defined in paragraph 7 of Part 1 of Schedule 12A to the Act.

**12/11 APPLICATION FOR A NEW HACKNEY CARRIAGE/PRIVATE HIRE
DRIVERS LICENCE**

The Hearing took place in the presence of the applicant. Mr Phil Mason

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was also in attendance as the Council's Solicitor.

The Committee heard the appeal in accordance with the Council's agreed procedure.

The applicant had not been sent a copy of the Agenda, but he confirmed to the Committee that he was happy to proceed with the Hearing, and did not want the case adjourned to the 20 July 2011 meeting.

The Licensing Officer presented the report, which was to determine an application for the grant of a Hackney Carriage/Private Hire driver's licence in accordance with the Town Police Clauses Act and the Local Government (Miscellaneous Provisions) Act 1976. The report explained that the applicant had an endorsement on his licence for exceeding the statutory speed limit on 13 August 2008, which remained unspent.

The applicant explained his background situation prior to the offence, giving further details where requested. He had a current taxi licence with North Norfolk District Council which he had had since 2007, but was in the process of moving. He invited the Committee to view commendation evidence he had received from previous places of work. One of these was read out to the Committee by the Chairman.

Having heard everything the applicant had to say, the Solicitor explained that the Committee would withdraw to consider the application. They would do so by considering the evidence presented to them and they would then apply the statutory test (i.e that the Council, as Licensing Authority, needed to be satisfied that the applicant was a fit and proper person to hold a hackney carriage or private hire driver's licence).

RESOLVED that

1. An initial Hackney Carriage/Private Hire Driver's Licence be granted for a period of 12 months
2. Officers would have delegated powers to renew the Licence for a further two years in the appropriate circumstances.

The Solicitor confirmed that, having read the report and heard the oral evidence, the Committee was satisfied in all circumstances, that the applicant was a fit and proper person in accordance with Section S1(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 to hold a Hackney Carriage/Private Hire driver's licence.

13/11 APPLICATION TO SUSPEND/REVOKE A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Hearing took place in the presence of the appellant. Mr P Mason was also in attendance as the Council's Solicitor.

The Licensing Officer advised the Committee that the appellant had not been sent a copy of the Agenda. The Chairman asked the appellant if he would like to postpone the hearing until the next Appeals Committee scheduled to take place on 20 July 2011 or alternatively the item could be heard after the next Agenda item or after all the Agenda items had been heard. The appellant wanted the matter resolved at the Hearing and had

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since been given a copy of the Agenda and was happy with the way it had been set out and wanted it to be dealt with by the Committee. He said he would not have wanted anyone else with him. It was made clear to him again that he had the chance to postpone the hearing, but if not, it would be heard after the first Agenda item unless he changed his mind in the interim. The appellant left the room.

When the Licensing Officer and appellant returned to the Hearing, the Committee heard the appeal in accordance with the Council's agreed procedure.

The Licensing Officer presented the report, which was to determine the suspension/revocation of a Hackney Carriage/Private Hire driver's licence. In accordance with Section 61(1)(b) of the local Government (Miscellaneous Provisions) Act 1976 of any other reasonable cause, due his recent conviction under Health Act 2006.

The appellant failed to comply with the requirement that the Licensing Team be notified in writing within 7 days of the conviction he pleaded guilty to, and was prosecuted for on 5 May 2011.

The appellant advised the Committee that as Breckland Council prosecuted him he assumed that the Licensing Team would know the decision made by the Court, and did not realise he had to inform them himself. The time that elapsed he thought was about 7-10 days in which he did not inform Breckland Council of his conviction.

Whilst the appellant had previously been provided with a copy of the transcript from the tape recorded interview held on 7 January 2011 he was not given one with the Agenda given to him at the Hearing, therefore the Licensing Officer gave him a copy at the Hearing of that and all the Appendices. The appellant confirmed he had been given all relevant documentation.

It was regrettable that the appellant had not received a copy of the Agenda and Appendices prior to the Hearing but he expressly stated that he was prepared to have the matter dealt with on 9 June 2011.

The Hearing was adjourned to allow the appellant time to read through the transcript of the tape recorded interview held on 7 January 2011 and Appendices.

After Agenda Item 11 & 12 had been heard, the appellant and Licensing Officer returned to the room. The appellant advised the Committee that page 34 of Appendix C detailed what happened.

The appellant stated that he was in the process of stopping smoking. He understood the legislation and agreed with it. He had driven taxis for 42 years, 22 of those in Dereham.

Having heard everything the appellant had to say and evidence put before them, the Solicitor explained that the Committee would withdraw to consider the appeal and would do so by considering the evidence presented to them.

After retiring to consider the matter the Solicitor advised in summary that :

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- the appellant had been a driver of private hire vehicles for many years
- he had pleaded guilty under the Health Act 2006 and ordered to pay the necessary costs
- evidence had been provided of curtailing his smoking habit

Accordingly, it was

RESOLVED that the hackney carriage/private hire vehicle licence issued to the appellant be suspended for the period of 3 weeks.

The Chairman explained to the appellant that he had the right to appeal within 21 days of the decision, and reiterated the importance that drivers must submit details of any convictions to the Licensing Authority within 21 days.

14/11 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 2011 NO 5

The Hearing, which was heard in accordance with the Council's agreed procedure, took place in the presence of the appellant and his neighbour, Mrs Baker. Mr Phil Mason was also in attendance as the Council's Solicitor.

The Tree and Countryside Officer (TCO) presented the report, which was to consider confirmation of Tree Preservation Order 2011 No. 5 in relation to objections to that confirmation from the owner of the tree and the neighbour at 36 Fakenham Road. Confirmation of a TPO was being considered following the new owner's intention to have the tree removed.

The TCO found that the tree was a fine oak of substantial proportions, in good condition with no specific areas of concern and was prominent in the village scene over a considerable area, including the recreational area of St Mary's Primary School to the east, and the adjacent section of the Fakenham Road through route to the west. He felt the life span of the tree could be indefinite with appropriate management.

The tree was less than 4 meters from the back of the house. No evidence of structural damage to the respective dwellings had been presented and risks from structural failure of parts of the tree may be mitigated by appropriate pruning.

The Solicitor explained the powers under which the Committee were able to confirm a TPO and gave them guidance.

The TCO's opinion on the letter received from the Chartered Surveyor to the appellant was that he was not a tree expert, and did not provide evidence to demonstrate structural damage to the building.

A Committee Member questioned the TCO on how close had he inspected the tree, to which he answered 360 degrees around it, but he had not climbed up it. The Committee Member had inspected the tree himself and on climbing a ladder placed against it, he observed a holly bush growing in the middle of it which was visible from the ground about 3'-4' high, along with quite a bit of rot in the area. He believed in the future it could make the tree weak at that point and therefore dangerous to residents in the property,

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the adjacent one and those in the grounds of the school.

The Chairman asked the TCO if he would like to re-visit the tree following the Committee Member's findings which he did not, he was also asked if he remained satisfied that the tree was not compromised, which he confirmed. A TPO would not preclude any work done on the tree in agreement with the local authority.

In answer to the Committee Member's opinion that the tree appeared to have had the top broken out, the TCO explained that many trees had a chalice type structure. He did not believe it had been crowned or pollarded.

Mr Stimpson, the appellant, believed the TPO placed on it was a rash decision and a 'knee jerk' reaction in finding out that they intended to carry out work on the tree. He disagreed that it had high amenity value as it was located behind his property next to woodland, and there were other trees in neighbouring properties and in Fakenham Road. He did not believe the TCO had carried out a proper survey of the tree. The house was believed to be 200-300 years old and was older than the tree.

He circulated for the benefit of all Committee Members and the TCO, photographs taken in the last two weeks which showed damage to his property, the size of the tree canopy and damage to it. He explained that debris which had fallen from the tree along with the shade it produced, had caused considerable damage to the roof of his property, with the need to replace felt and timbers, due to damp held in the tiles. The shade did not allow the roof to dry out. When it rained, water laid in the crown. Tree boughs that came out from the trunk were of considerable weight when moisture gathered, and to reduce the size would not be an option, as he believed the trunk was not in good order.

He had spoken to the Headmaster of St Mary's Primary School who had concerns and would be keen to have work undertaken on the tree.

In the 28 years Mrs Baker had lived next door at 36 Fakenham Road, she said the tree had grown considerably. They had it topped 10 years ago and was expensive. The tree caused damp, lack of light, and covered one side of her house. When Mrs Baker contacted Breckland Council a year ago, there was not a TPO on it. She advised of extra insurance costs incurred due to having a tree 3m away from their property.

Mr Stimpson had purchased the property from his grandfather with the intention of keeping it as his family home and putting a small bedroom extension on the rear to 'square off' the property. He strongly believed a huge amount of weight overhung his property and if a branch fell, it would fall on a bedroom. He would be willing to replant trees in the garden. The TPO had been sent to his neighbours, Mr & Mrs Baker at 36 Fakenham Road.

Having viewed the photographs provided by Mr. Stimpson, the TCO did not change his recommendation.

The Solicitor reminded all parties what need to be taken account of (visibility, individual impact, wider context and the question of expediency).

The appellant and Mrs Baker asked if it was correct to place a TPO on a

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tree purely on amenity grounds when there were health and safety concerns, to which the Chairman replied that if the Council decided the tree was of value a TPO could be placed on it, if it was found to be dangerous the tree could be cut down following a proper examination undertaken by a tree expert, and carried out through the proper channels. Without a TPO the Chairman had no doubt the tree would be cut down. If a TPO was confirmed, the appellant and Mrs Baker would be at liberty to apply for works they thought they could justify to the tree, and the Council would consider the application.

After retiring to consider the matter the Solicitor advised in summary that :

- the tree was prominent in the landscape
- it was publically visible from the public highway
- it was old and in need of proper management
- evidence was not found that the tree was in immediate need of felling

Accordingly, it was

RESOLVED that TPO 2011 No. 5 be confirmed as recommended, in order to protect the tree and in order to ensure proper management of it.

Mrs Baker left the room.

The appellant failed to see what the benefit was on placing a TPO on it when they were going to apply to have it removed.

15/11 OBJECTION TO THE MAKING OF TREE PRESERVATION ORDER 2011 NO 6

The Hearing, which was heard in accordance with the Council's agreed procedure, took place in the presence of the appellants, Mr & Mrs Kelly. Mr Phil Mason was also in attendance as the Council's Solicitor.

The Tree and Countryside Officer (TCO) presented the report, which was to consider confirmation of Tree Preservation Order 2011 No. 6 in relation to objections to that confirmation from the owner of the tree.

It is a well developed walnut tree in good condition, standing at the north east end of a large urban garden immediately adjacent to the boundary of the Attleborough Conservation Area.

The TCO was asked how the tree was scored with regard to the guidance provided by The Solicitor. In answer he stated, whilst not prominent to the public it was characteristic in the urban landscape of large houses and large gardens, which also had walnut trees in them. He thought it was about 80 years old and could live for another 40 years.

Mr Kelly, appellant, stated there did not appear to be other walnut trees in the area. A neighbour had knocked down a lot of trees to build a house. She circulated photographs to the Committee and stated that in the lounge hardly any sky could be seen. The tree was mature when they moved into the property 33 years ago, and it had grown since then. The tree was about 60' away from the house. There had been no objections from neighbours if the tree were to be removed. It had been lopped twice. The TCO said he

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saw no evidence of it having been lopped.

Mr & Mrs Kelly advised that they were no longer physically and mentally able to maintain the garden and they had hoped to downsize to a smaller property.

The Solicitor explained the powers under which the Committee were able to confirm a TPO and gave them guidance on this.

After retiring to consider the matter the Solicitor advised in summary that :

- the tree was not visible to the public
- it was located within a private garden
- it had limited amenity value to the surrounding area
- the life span was limited due to the type of the tree

Accordingly, it was

RESOLVED, not to confirm the Tree Preservation Order 2011 No. 6

16/11 NEXT MEETING

It was noted that the next meeting would be on Wednesday, 20 July 2011.

The meeting closed at 2.05 pm

CHAIRMAN