



AGENDA

NOTE: In the case of non-members, this agenda is for information only

- Committee** - **APPEALS COMMITTEE**
- Date & Time** - WEDNESDAY, 30TH NOVEMBER, 2011 AT 10.00 AM
- Venue** - NORFOLK ROOMS, THE CONFERENCE SUITE, ELIZABETH HOUSE, DEREHAM

Members of the Committee requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting. If the information requested is available, this will be provided, and reported to Committee.

Persons attending the meeting are requested to turn off mobile phones

Members of the Committee:

Mrs S Armes
Mr S.G. Bambridge
Mr R.W. Duffield

Mrs L.H. Monument (Chairman)
Mr I. Sherwood (Vice-Chairman)
Mr M. A. Wassell

Member Services
Elizabeth House, Walpole Loke,
Dereham Norfolk, NR19 1EE

Date: Monday, 21 November 2011

PART A - ITEMS OPEN TO THE PUBLIC

1. MINUTES

To confirm the Minutes of the meeting held on 7 September 2011.

2. APOLOGIES

To receive apologies for absence.

3. URGENT BUSINESS

To note whether the Chairman proposes to accept any item as urgent business, pursuant to Section 100(B)(4)(b) of the Local Government Act, 1972.

4. DECLARATION OF INTEREST

Members are asked at this stage to declare any interests that they may have in the following items on the agenda.

The Members' Code of Conduct requires that declarations include the nature of the interest and whether it is personal or prejudicial interest.

5. NON-MEMBERS WISHING TO ADDRESS THE MEETING

To note the names of any non-members who wish to address the meeting.

6. HEARING PROCEDURES

7. EXCLUSION OF PRESS AND PUBLIC

To consider passing the following resolution :

"That under Section 100(a)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that it is likely to involve the disclosure of exempt information as defined in paragraphs 1, 2 and 7 of Part 1 of Schedule 12A to the Act".

PART B

ITEMS FROM WHICH THE PRESS AND PUBLIC HAVE BEEN EXCLUDED

8. APPLICATION FOR A GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Report of the Assistant Director of Commissioning.

9. APPLICATION FOR A GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Report of the Assistant Director of Commissioning.

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BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 7 September 2011 at 10.05 am in
Norfolk Room, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mrs S Armes
Mr S.G. Bambridge
Mr R.W. Duffield

Mrs L.H. Monument (Chairman)
Mr I. Sherwood (Vice-Chairman)
Mr M A Wassell

In Attendance

Mr Philip Mason
Patrick O'Brien
Fiona Inston
Jane Osborne

- Solicitor
- Licensing Officer
- Principal Licensing Officer
- Committee Officer

29/11 MINUTES

The following amendments were noted to the Minutes :-

Minute No. 23/11, page 2, last sentence should read, in 16 years he had been convicted of no other offences.

Minute No. 24/11, page 4, Resolved Item 2, it should read importance and not important.

Minute No. 24/11, page 4, final paragraph should read, and therefore he needed to demonstrate a further two years.

Subject to the above, the Minutes of the meeting held on 20 July 2011 were confirmed as a correct record and signed by the Chairman.

30/11 DECLARATION OF INTEREST

Councillor Sherwood had used the taxi company referred to in Agenda Item 8, but had no connection with them.

With regard to Agenda Item 9, Councillor Monument recognised the Breckland Council Hackney Carriage/Private Hire Driver whom she had met 15-20 years ago in a business context. Councillor Wassell was a Member for the Watton Ward.

31/11 HEARING PROCEDURES

32/11 EXCLUSION OF PRESS AND PUBLIC

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 items of business on the grounds that they involve the disclosure of exempt information as defined in paragraph 7 of Part 1 of Schedule 12A to the Act.

Action By

33/11 SUSPENSION/REVOCATION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

Councillor Sherwood was not present for the Agenda Item, as he left to attend another Committee meeting.

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

The Hearing took place in the presence of the appellant, a Licensing Officer, and the Principal Licensing Officer. Mr Phil Mason was also in attendance as the Council's Solicitor.

The appellant had received all relevant documentation.

The Licensing Officer presented the report, which was to determine the suspension/revocation of a Hackney Carriage/Private Hire driver's licence due to his incurring motoring convictions and failure to notify the Licensing Authority of such convictions as required by the conditions of his licence. He advised the Committee that in the report, the initial interview was to investigate an element of deception, but as the appellant was not aware of a pending conviction at the time, therefore the initial thrust with regard to deception should be discounted.

The appellant was given the opportunity to put his case forward, he advised that the night before he applied for a taxi licence a speed camera had 'flashed' at him, but he was not aware the camera was live. He had been driving an HGV at 45 mph. He used his taxi licence ad hoc, and it was a slip of his mind in not advising the Licensing Authority, as he did not use his licence every day. He produced a letter that had been written by Platinum Cars in Swaffham which was circulated to Committee Members and the Licensing Officer. He worked as a freelance taxi driver, but generally he was a lorry driver, which he had done for the last 12 years. He had lived in Swaffham all his life. He had not driven a taxi since Christmas 2010 and did not expect to drive another one until Christmas 2011.

Having heard everything the appellant had to say and evidence put before them, the Solicitor explained that the Committee would withdraw to consider the application and 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 appellant was a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence).

After considering the matter, the Committee returned.

The Solicitor advised the findings of fact :

- The appellant is on occasion a Hackney Carriage/Private Hire driver.
- He admitted on two occasions he failed to inform the Local Authority of two speeding convictions.
- The letter of support from Platinum Cars dated 26 August 2011 was noted.
- In all circumstances of the case, the Committee reaffirmed its requirement that all drivers should inform the Local Authority of any relevant conviction in accordance with Breckland Council's Policy

Accordingly it was,

RESOLVED, that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for the period of one month for the reasons set out above.

The Chairman advised the appellant the decision was subject to appeal to the Magistrates Court. The Appeal period was 21 days from the date on which the notice of the decision was given.

The appellant asked if he could waiver his right to appeal, but he was advised he could not.

34/11 SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Chairman recognised the appellant, Councillor Wassell was a Member for the Watton Ward.

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

The Hearing took place in the presence of the appellant, the complainant, a Licensing Officer, and the Principal Licensing Officer. Mr Phil Mason was also in attendance as the Council's Solicitor.

The appellant had received all relevant documentation.

The Licensing Officer presented the report, which was to determine the suspension/revocation of a Hackney Carriage/Private Hire driver's licence due to his recent behaviour in respect of a fellow Breckland Council licensed Hackney Carriage/Private Hire Driver. The appellant had been a licensed Breckland Council Hackney Carriage/Private Hire Driver since at least 2002.

The complainant was given the opportunity to put his case forward. He advised he was very nervous and could not speak much. The appellant always made him frightened but since the incident he had calmed down, but he still did not feel safe around him or sitting on a Hackney rank, and he described the manner he behaved in was aggressive. He conducted most of his business in Dereham, and did not want to be stopped from working freely due to fear. Prior to the incident, he had not met the appellant before.

The appellant was given the opportunity to put his case forward, he advised he had run taxis since November 1989. He had stopped beside the complainant's vehicle on the day for about 8-10 seconds as he had heard that he was undercutting rates, which was something he personally did not agree with. He denied using the language as recorded in Item 3.1.3 of the report or referring to him as a 'foreigner'. He did ask the complainant where he came from and told him to get back, but he told the Committee he was remorseful. He had suffered a 'bad day' on the day in question. He had been driving in Dereham for 23 years, and this was the first ever incident he had been involved in, he was one of the longest serving drivers with a Hackney Carriage Licence. When he started in business there were 3 other taxi companies in Dereham now there were 7-8. It was getting harder to

Action By

make a living with the increase in private vehicles. He said he would be financially affected if he lost his licence.

Having heard everything the appellant and the complainant had to say and evidence put before them, the Solicitor explained that the Committee would withdraw to consider the application and 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 appellant was a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence).

After considering the matter, the Committee returned. The Chairman of the Committee advised the appellant they had considered whether to revoke or suspend his licence. They took a very dim view of the example he was setting to his own staff as owner of the company and their employer and this was reflected in the period the Committee had decided to suspend his licence for.

The Solicitor advised the findings of fact :

- The appellant had been involved in the taxi business for many years.
- There was a serious incident in Dereham on 1 May 2011 between the appellant and the complainant.
- There was no independent evidence as to what took place at the time on 1 May 2011.
- The appellant had admitted confronting the complainant on that occasion.
- The appellant had expressed remorse about the incident, however the Committee was concerned that high standards should prevail amongst licensed Breckland drivers, and the appellant failed to reach the required standard of behaviour in this particular incidence.
- Furthermore, the Committee takes very seriously its duty under the Race Relations Act 1976 and the Committee believed there was a racial incident on 1 May 2011

Accordingly it was,

RESOLVED, that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for the period of four months for the reasons set out above.

The Chairman advised the appellant the decision was subject to appeal to the Magistrates Court. The Appeal period was 21 days from the date on which the notice of the decision was given.

35/11 NEXT MEETING

It was noted that the next meeting would be on Wednesday 19 October, 2011 at 10.00 a.m in the Norfolk Room, Conference Suite, Elizabeth House, Dereham.

The meeting closed at 12.20 pm

CHAIRMAN

**PROCEDURE FOR
APPEALS COMMITTEE HEARINGS**

1. Chairman introduces the Officer(s) and explains procedure to parties present.
2. Presentation by Officer(s).
3. Questions to Officer(s) by Members on Policy etc.
4. Presentation by Applicant (opening, call witnesses and produce documents relevant to application).
5. Questions to Applicant by Members.
6. Summary by Applicant.
7. Advice from Officer(s) on policy and/or Solicitor on law and jurisdiction.
8. Members retire from hearing accompanied by the Committee Officer to consider the matter (They may call in Solicitor to help draft reasons for decision. Any other advice must be repeated in open forum).
9. Members return and the decision, including reasons, is announced.

By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 8

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By virtue of paragraph(s) 1, 2, 7 of Part 1 of Schedule 12A
of the Local Government Act 1972.

Agenda Item 9

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