

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 11 January 2012 at 9.30 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mrs S Armes
Mrs L.H. Monument (Chairman)
Mr W Richmond

Mr I. Sherwood (Vice-Chairman)
Mr M. A. Wassell

In Attendance

Mr Philip Mason
Patrick O'Brien
Tiffany Bentley
Fiona Inston
Jane Osborne
Debbie Anderson

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

1/12 MINUTES

Cllr Armes advised the Committee that it was acceptable for a Conservative substitute to stand in for the Labour/Other Member when necessary.

The Minutes of the meeting held on 30 November 2011 were confirmed as a correct record and signed by the Chairman.

2/12 APOLOGIES

Apologies for absence had been received from Cllrs Bambridge and Duffield. Cllr W Richmond was present as Cllr Duffield's substitute.

3/12 DECLARATION OF INTEREST

Cllr Armes declared a personal interest in Agenda Item 14, by virtue of having used taxis in Thetford driven by the appellant and the supporter who accompanied him at the Appeal.

4/12 HEARING PROCEDURES

The procedures were noted.

5/12 EXCLUSION OF PRESS AND PUBLIC

RESOLVED 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 they were 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.

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6/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Prior to the meeting, the application had been withdrawn as the appellant had voluntarily surrendered her licence.

7/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

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

The Hearing took place in the presence of the appellant, the Licensing Officer, Assistant Licensing Officer and Mr P Mason, the Council's Solicitor.

The Chairman made introductions and explained the procedures to the appellant. The appellant confirmed he had received all relevant documentation.

Tiffany Bentley, Licensing Officer presented the report which was to determine an application to suspend/revoke a Hackney Carriage/Private Hire driver's licence in accordance with Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 due to failure to maintain his Hackney Carriage Vehicle licence. She explained the process of how mechanical test certificates were issued by authorised garages and clarified that they were separate from MOTs. For the benefit of the Committee, she explained the renewal application process, and confirmed that the appellant's driver licence and Hackney Carriage Vehicle licence were both now current.

The appellant stated it was never his intention to deceive the Authority and would not have taken his vehicle for an MOT had that been his intention. He advised that he attended Breckland Council with the fee to re-new his Hackney Carriage/Private Hire licence at the same time there was a change in procedures with regard to new plates and holders. He was told by the Licensing Officer he saw on the day, of the change in procedure and was issued with a new holder. The appellant stated he was told by the Licensing Officer that the new plate would be sent to him, so during that time, he continued to carry on with his normal business whilst he awaited receipt of the plate, at which time he would have returned to the Council office.

The Licensing Officer explained the change in procedure with regard to the plates and holders and stated that the procedure could not be completed with just one appointment with the Authority. All taxi drivers had been written to with regard to obtaining the new free of charge brackets (holders).

When questioned by a Member of the Committee, the appellant confirmed he understood that the plate had to be fitted before the licence was attached. When asked why he carried on for 10 months without an up to date licence, he stated he did have a plate on the vehicle, albeit an out of date one, due to personal circumstances he had encountered during that period. The Chairman asked him what had prompted him to take the vehicle for a mechanical test in October 2011, to which he replied the vehicle was due for an MOT, and felt that it would prompt the Licensing Officer about the plate.

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Members were concerned and could not understand how the appellant carried on for a period of 10 months with an out of date plate and did nothing to chase the plate up with the Authority, during which time the vehicle may have been uninsured. He was asked how much work he had undertaken during that period to which he replied very little. He advised that he had spoken to a gentleman at his insurance company who stated that his insurance was valid.

The appellant said he submitted the vehicle for a test in 2010.

It was explained to Members how the Authority's Lalpac system worked when applications were received, and that there was no record on that system of an application from the appellant. The Licensing Officer said it was possible to verify dates from the system if the vehicle had undergone a mechanical test prior to 2011.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that the Members would apply the statutory test to the application to determine if they considered 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 following findings of fact :

1. The appellant had used an unlicensed vehicle for a period of 10 months
2. The appellant failed to check with the Licensing Authority on the status of the vehicle in 2011
3. The duty to ensure that vehicles were properly licensed falls on the driver/operator

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for the period of two weeks, which the Committee believed to be an appropriate sanction under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976.

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 was told by the Chairman to concentrate on keeping all his paperwork with the Licensing Authority up to date in future.

8/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

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

The Hearing took place in the presence of the appellant, the Licensing

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Officer, Assistant Licensing Officer and Mr P Mason, the Council's Solicitor.

The Chairman made introductions and explained the procedures to the appellant.

The Licensing Officer presented the report which was to determine an application to suspend/revoke a Hackney Carriage/Private Hire drivers licence in accordance with Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 due to the incurrence of motoring convictions and the failure to notify the Licensing Authority of such convictions as required by the conditions of his licence. The appellant no longer lived at the address shown in the report.

The appellant confirmed he had received a copy of the report. He explained that after he telephoned Breckland Council to ascertain what was expected of him with regard to the speeding conviction incurred on 16.10.2009, he advised them in writing within seven days of receiving the conviction (which a member of the Licensing Team acknowledged), that he would appeal against it to Norfolk Constabulary. He confirmed he had been advised that if he did receive penalty points he would need to let Breckland Council know. When Norfolk Constabulary advised him that their decision was final around February/March 2010, he had surrendered his vehicle plates to Breckland Council as he no longer worked as a taxi driver, but instead, from the first week in February 2010 he was employed in a new job. On 11.7.2010 he received a further conviction, but again it was during the time he did not work as a taxi driver. Therefore, as he was not working as a taxi driver during the period March 2010 to July 2011 he did not think he had to let Breckland Council know.

At the Hearing, the Licensing Officer was not able to confirm that the appellant had handed in his vehicle licence without checking the computer system. The appellant did not have a copy of the letter he sent to Breckland Council and the Licensing Officer confirmed there was no record of the letter on file. For the benefit of Members, the Licensing Officer explained the procedure followed when a driver received a conviction.

It was explained by the appellant that the only reason he returned to taxi driving was due to the work at his new employment having "dried up", the financial climate and to carry out contracts on behalf of his father who was unable to do so himself, due to illness and hospitalisation. He acknowledged the offence was against the rules and apologised, and explained it had not been done to be dishonest.

When questioned by the Solicitor, the appellant stated that he did not surrender his Hackney Carriage/Private Hire driver's licence in February/March 2010 due to there always being an opportunity to do extra work with his father's company.

The appellant stated that whilst wrong, he believed that the two SP30s he received in three years were minimal offences and not dangerous ones, both of which he encountered whilst driving in the early hours of the morning. He thought the amount of convictions he had received in 12 years of driving was not an excessively bad average given the number of miles he had driven and the times of day he worked. Members were concerned that the appellant thought that the 4 speeding convictions he received during 12 years of driving was an acceptable average.

The appellant asked the Committee to take into account the work he covered for his father, as if they were not able to carry out the contracts, they would need to give four months' notice. His father had had a contract with Norfolk County Council since 2009, but the appellant did not have a personal contract with them himself.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that the Members would apply the statutory test to the application to determine if they considered 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 following findings of fact :

1. The appellant had many years experience as a driver of a motor vehicle
2. The appellant had held a licence from Breckland Council for a period of three years
3. The appellant made contact with the Local Authority in relation to the first conviction in October 2009
4. The appellant failed to notify the Local Authority of a number of changes of address
5. The appellant failed to appreciate the seriousness of the accumulation of speeding offences whilst holding a driver's licence issued by the Council.

RESOLVED, that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for the period of one month for the reason of the safety of passengers which was of paramount importance. From the evidence provided, the Committee felt the appellant failed to give due regard to the safety element required by the District Council.

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 Chairman advised the appellant he needed to be very careful in future of the statutory speed limits and to keep Breckland Council up to date with where he lived.

9/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The application was withdrawn prior to the meeting as the appellant had informed Officers that he would be on holiday on the day of the meeting.

10/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

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

The Hearing took place in the presence of the appellant, Licensing Officer

and Mr P Mason, the Council's Solicitor.

The Chairman made introductions and explained the procedures to the appellant. The appellant had received all relevant documentation.

The Licensing Officer presented the report which was to determine an application to suspend/revoke a Hackney Carriage/Private Hire drivers licence (which he had held much longer than 1997 as indicated in the report) in accordance with Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 due to failure to produce a valid medical certificate as required by the conditions of his licence.

The appellant advised he had driven taxis in Breckland for at least 30 years and that he had not been able to obtain an appointment to see his regular GP until October 2011. He controlled his medical condition very well and only saw his Consultant once a year. He kept to the exact dosage of medication as recommended by his Consultant Physician and in answer to a question from a Member of the Committee, he explained his daily routine with regard to his blood tests and exercise. He had not had any 'hypo' instances in the last ten years.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that the Members would apply the statutory test to the application to determine if they considered 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 following findings of fact :

1. The appellant controlled his medical condition on a daily basis
2. The Consultant Physician's report dated 16 November 2011 was very positive

Accordingly it was :

RESOLVED that, the appellant was a fit and proper person able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver subject to the condition being set that the appellant maintained a positive annual report from his Diabetes Consultant together with a general medical report from his GP.

The reason for the decision was that the evidence provided by the appellant satisfied the test that he was a fit and proper person to hold a licence under Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976.

11/12 APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

The application was withdrawn prior to the meeting.

12/12 APPLICATION FOR A GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Cllr Armes declared a personal interest by virtue of having used taxis in Thetford driven by the appellant and the supporter who accompanied him.

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

The Hearing took place in the presence of the appellant, Principal Licensing Officer, Licensing Officer, Assistant Licensing Officer and Mr P Mason, the Council's Solicitor.

The Chairman made introductions and explained the procedures to the appellant.

The Licensing Officer presented the report which was to consider the grant of a Hackney Carriage vehicle licence in accordance with Section 37 of the Town Police Clauses Act 1847 and Section 47 of the Local Government (Miscellaneous Provisions) Act 1976. The appellant had been a taxi driver prior to 2008, and not as recorded in the report. The appellant stated he started driving in 1998.

The Licensing Officer explained for the benefit of Members that Application Packs were sent out by the Contact Centre with Guidance Notes, the Licensing Policy was available online and advice was given to applicants to consult with Licensing Officers. He read out the content of a file note dated 16 November 2011 following a telephone call from the appellant.

The appellant stated as he was aware of 7 vehicles with tinted glass already in the area he felt there was no reason not to go ahead and purchase the vehicle, as his tint was no more than those. There was nothing to state that he had to bring the vehicle into the Licensing Authority. He advised he only found out about the Authority's policy after he had purchased the vehicle.

The appellant tabled at the meeting a letter received by him on 6 January 2012 from the Customer Relations Department at Toyota with regard to the make and model of his vehicle and the legal requirement of the percentage of light through the different windows, all of which his own vehicle complied with. The letter was read out to the Committee by the Chairman. The Licensing Officer had not seen the letter or had been given prior notification of it.

The supporter of the appellant questioned whether Breckland Council could obtain a light device to measure tints, as used by the Police. The Licensing Officer commented that a device of that nature was actively being looked into. The appellant made reference to a vehicle advert consisting of 10 cars, 8 of which all had tinted glass.

Work undertaken by the appellant mainly consisted of airport runs and some railway rank work. He did not undertake any school contracts, and ceased night work six years ago.

The vehicle was inspected by the Committee.

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Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that it was important that the Committee was satisfied whether the vehicle in question fell within the requirements of the Licensing Policy.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant had initial contact with Licensing Officers over the Council's existing policy on tinted windows prior to purchasing the vehicle
2. Officers presented the report to the Committee on the basis of the Authority's current policy on tinted windows
3. The appellant had produced a certificate with regard to the factual situation in connected with the tinted window policy
4. On evidence provided, the appellant's vehicle complied technically with the existing policy on tinted windows
5. The vehicle was inspected by Members of the Committee; however the Committee on inspecting the vehicle had grave concerns with regard to the high level of obscurity in the glass

RESOLVED to grant a Hackney Carriage vehicle licence, however in doing so, given Members were concerned that safety issues should remain paramount when licensing all vehicles in the Breckland District, and in granting the licence, a condition was imposed that the vehicle was not to be used for school contracts or by unaccompanied children under the age of 16.

The reason for the condition was due to the safety of those using that particular vehicle and safety remaining paramount within the Breckland district.

The appellant suggested that he might change some of the tinted windows/glass panels, which the Chairman thought to be a very good compromise. He was advised that if he wished the condition to be removed, he would need to contact the Licensing Authority and re-present the vehicle for their inspection. It was made clear to him, that until that time, the vehicle was to be used with the condition imposed.

13/12 REQUEST FOR AN EXEMPTION TO THE BRECKLAND COUNCIL LICENSING POLICY IN RELATION TO A HACKNEY CARRIAGE VEHICLE LICENCE

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

The Hearing took place in the presence of the appellant, Licensing Officer and Mr P Mason, the Council's Solicitor.

The Chairman made introductions and explained the procedures to the appellant.

The Licensing Officer presented the report which was to consider the request for an exemption from the Breckland Council Licensing Policy in relation to a Hackney Carriage vehicle licence. It was noted that the date of

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birth in the report was incorrect, and should read 19 July 1961.

The appellant advised that his type of vehicle (MPV) was not easy to obtain without tinted windows as given the windows were so large they were produced with tinted windows to prevent passenger discomfort with regard to over-heating.

He had tried to bring quality to the Breckland area by purchasing the vehicle which he believed should be considered as a luxury vehicle. He had received positive feedback from passengers who had been impressed with the vehicle which was currently licensed without the tinted windows. However for the comfort of his passengers he wanted to re-fit the tinted windows. The model was not manufactured without tinted windows; no measurements were shown in the "birth certificate" with regard to the percentage of light through the windows.

One of the main reasons he purchased the vehicle was to undertake long to medium airport trips. He advised he did not undertake school runs at all. Although he had only owned the vehicle for 3 – 4 months, he estimated 50% of journeys undertaken in the vehicle were to airports. The vehicle was too expensive to undertake little trips in town.

The Committee left the room to inspect the vehicle outside.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that it was important that the Committee was satisfied that the vehicle in question fell within the requirements of the Licensing Policy.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant had stated that the vehicle should be regarded as a luxury vehicle for the comfort of passengers carried within
2. The Committee had no evidence of what items constituted a luxury vehicle
3. The Committee inspected the vehicle

Accordingly it was,

RESOLVED, that the Committee found the vehicle to be of a high specification but not so luxurious to fall within a class of its own, the application was therefore refused as it failed to reach the Committee's view of being a luxury vehicle.

14/12 DATE OF NEXT MEETING

It was noted that the next meeting would be on Wednesday 22 February 2012 at 10.00 a.m in the Norfolk Room.

Please note, since the meeting, it has been agreed with the Chairman that the meeting will commence at 9.30 a.m.

The meeting closed at 3.50 pm

CHAIRMAN