

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 22 February 2012 at 9.30 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham**

PRESENT

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

Mr I. Sherwood (Vice-Chairman)
Mr M. A. Wassell
Mr W. R. J. Richmond (Substitute Member)

In Attendance

Mr Philip Mason
Patrick O'Brien
Jane Osborne
Tiffany Bentley

- Solicitor
- Licensing Officer
- Committee Officer
- Licensing Officer

15/12 MINUTES

The Minutes of the meeting held on 11 January 2012 were confirmed as a correct record and signed by the Chairman.

16/12 APOLOGIES

Apologies for absence had been received from Cllr Armes, Cllr W Richmond was present as her substitute.

17/12 DECLARATION OF INTEREST

Cllr Duffield declared a personal interest in Agenda Item 9 by virtue of having had business contact with the appellant.

Cllr Sherwood declared a personal and prejudicial interest in Agenda Item 11 by virtue of being Chairman of the Licensing Committee.

Cllr Sherwood declared a personal interest in Agenda Item 13 by virtue of knowing the family of the appellant.

18/12 HEARING PROCEDURES

The procedures were noted.

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19/12 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.

20/12 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 who was accompanied by his wife, the 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 consider 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 under any other reasonable cause, due to the incurrance of a motoring conviction, the failure to notify the Licensing Authority of that conviction and the use of a mobile phone whilst driving a vehicle.

The principal consideration was whether the safety of the public might be at risk through the appellant's driving and possibly evasive behaviour in not disclosing his motoring offences.

She tabled a letter to Members received by her that morning from the appellant dated 10 June 2011, advising the Licensing Team that he had received a fixed penalty on his licence in respect of the offence of driving his personal vehicle whilst talking on his mobile phone. She was confident that the letter had not been received by Breckland Council prior to the date of the hearing, as had it have been received, it would have been included as an Appendix to the report. The hearing would still have taken place even if the letter from the appellant had been received advising them of his motoring conviction.

The appellant stated his date of birth was 13 May 1954 and not as stated in the report. He explained he had contested the conviction. Whilst he admitted to Members it was not a safe procedure, he explained he was listening to an MP3 file in his open topped sports car and had the phone propped up against his ear with both hands

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on the steering wheel. He agreed it was an offence, but he had not actively been engaged in a phone conversation.

He had written and posted a letter to the Licensing Team on 10 June 2011 advising them he had received a fixed penalty. He had done everything he could to remain in compliance with the Authority's regulations and complied completely with them. The first he had been notified of the Licensing Team's concern was when he provided his driving licence to them. He was made aware of the hearing date on 21 January 2012. He had offered to send in his letter dated 10 June 2011, and could have done that anytime between June 2011 and when he provided his licence in January 2012, but the Licensing Team had chosen not to avail themselves of the letter. He was a confident PC user and could prove the date and time he had written the letter. He had undertaken the necessary corrective action to avoid any further incidences of the same nature, by having had a Parrot CK100 fitted to his taxi following the conviction.

The appellant had taken early retirement from his former post in April 2011 and taxi driving was now his only employment which he undertook 3-4 nights a week; he described himself as being semi-retired.

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 perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant had held a Breckland Council Hackney Carriage/Private Hire driver's licence since June 2010.
2. He had been convicted of a motoring offence in June 2011.
3. Since the date of conviction, the appellant had taken remedial action to ensure that the safety of his driving had improved.
4. The offence for which he had been convicted of did not relate to a time when he had been driving a Breckland licensed vehicle.
5. The Committee made no findings on receipt or non receipt of a notification letter of the offence dated 10 June 2011, a copy of which was presented to the Hearing on 22 January 2012.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for a period of one week, which the Committee believed to be an appropriate sanction under Section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 as the appellant had failed to give the relevant notice of his conviction within the required time period.

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.

21/12 APPLICATION FOR THE SUSPENSION/REVOCAION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Cllr Duffield declared a personal interest by virtue of having had business contact with the appellant.

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

The Hearing took place in the presence of the appellant who was accompanied by his partner, the 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 consider 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 under any other reasonable cause, due to the incurrance of motoring convictions and the failure to notify the Licensing Authority of those convictions.

The principal consideration was whether the safety of the public might be at risk through the appellant's driving record and possibly evasive behaviour in not disclosing his motoring offences.

The Solicitor advised Members they had enough information before them, and would not take into account the spent convictions when determining the case.

The appellant explained how the incident with the van occurred in August 2011 along with reasons as to why he exceeded the statutory speed limits on two occasions, as shown in Appendix C. He had not asked the owner of the van if it was insured as he had presumed he would be able to drive it under his own car insurance. He accepted that he did not inform the Licensing Authority of the first two offences when he should have done, as he only realised it was a requirement

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at a later date when he had been advised by his employer that he should have done so. If the decision was taken to suspend his licence, his partner would have to drive at night to provide for his family. As well as taxi driving during the day and night himself, he undertook roofing work when it was available.

A Councillor could not understand why he was not aware that he had to notify Breckland Council in writing of any conviction, caution or driving offence imposed on him during the period of the licence within seven days of the conviction, as he had signed to say he acknowledged receipt of the White Book which contained the Byelaws and Conditions applicable.

When questioned further as to whether he did or did not know that he should have informed the Licensing Authority of his convictions, he confirmed that he had known.

The appellant had held a Hackney Carriage/Private Hire driver's licence about 13-14 years previously when he undertook taxi driving in Watton. His current taxi work included school contracts, and he and his partner shared one vehicle.

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 able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant was granted a Breckland Council Hackney Carriage/Private Hire driver's licence in June 2009.
2. The appellant signed the appropriate form relating to that licence and conditions on 1 June 2009.
3. The current DVLA licence indicated four convictions.
4. The appellant failed to notify the Licensing Authority of any of the convictions within the relevant time period.
5. The appellant was unable to give an adequate explanation for the failure to notify.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for a period of three months, the reason being the appellant had failed to reach the standards required by the holder of a Breckland Council Hackney Carriage/Private Hire driver's licence.

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.

22/12 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 who was accompanied by a Hackney Carriage Proprietor (employer), the Licensing Officer and Mr P Mason, the Council's Solicitor.

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

Patrick O'Brien, Licensing Officer presented the report which was to consider 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 under any other reasonable cause, due to failure to produce a valid medical certificate as required by the conditions of his licence.

The principal consideration was whether the safety of the public might be at risk through the appellant's failure to provide a satisfactory medical certificate and his inability to meet the required optical standard.

The appellant stated that given the length of time it had taken the DVLA to respond to his application for a Group 2 Lorry/Bus driving licence made in March 2011, he progress chased it over the telephone with them, asking them to make their decision as soon as possible as the outcome would be vital inasmuch as he might need to find alternative employment. At that time he was not told about the Group 2 requirement with regard to taxis. He received letters from them dated 29 June 2011 one of which advised him his application had been refused for a Group 2 Lorry/Bus driving licence, another letter advised that a car/motorcycle driving licence had been issued to him.

Following receipt of the letters from the DLVA he had carefully checked that no restrictions applied to his car/motorcycle driving licence whatsoever until he reached the age of 70, and therefore on that basis he decided to apply to renew his Hackney Carriage/Private Hire drivers licence.

He did not understand why he was not entitled to drive a taxi when his licence enabled him to drive a car.

He believed the comments made by the Doctor on the Medical

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Declaration form dated 17 October 2011 to be quite vague as the Doctor had not performed an eye sight examination himself, but copied all the figures from the VOC33 Eyesight Certificate.

The Licensing Officer wrote to the appellant on 27 October 2011. The appellant had not to date, provided additional information from a specialist optician as suggested in the letter, as he did not believe it would support his case, however he would have no problem in obtaining one.

He explained he was short sighted with a stigmatism. Whilst his eye sight could not be corrected to the perfect standard it was not degenerative. His current lens prescription was slightly below that prescribed for perfect correction, to "make his eyes work" and therefore it would not be beneficial for him to wear lenses twice as strong. He had been advised against corrective laser eye surgery due to his particular circumstances.

The Licensing Officer explained that Breckland Council's Licensing Policy was based on best practice guidelines, part of which was that applicants must be considered fit enough to meet at least the standards required for the grant of a Group 2 driving licence as recommended by the DVLA.

The appellant believed that the DVLA did not enforce the standard, to which he was advised that it was not the DVLA's responsibility to advise applicants of Breckland Council's Licensing Policy.

The appellant stated that if it was the decision of the Committee to revoke his Hackney Carriage/Private Hire driver's licence he would be without employment and would not be able to provide his employer with notice.

The Chairman explained that with regard to eye sight, Breckland Council's Licensing Policy demanded higher than the normal standard required.

The appellant was asked by the Chairman if he wished the Committee to consider if the hearing could be deferred to allow him the opportunity of obtaining a further eye sight test, to which he replied he would be happy to undergo a further eye sight test and the Hackney Carriage Proprietor who accompanied him added he could have a test to have his lenses strengthened to improve his eye sight.

The Committee withdrew to consider a deferment.

The Committee returned and advised the appellant they would not grant a deferment until the next hearing on 4 April 2012.

The Licensing Officer advised that during the intervening period from when the appellant was first licensed to when he applied to renew it,

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the application form had radically changed inline with best practice, and for the benefit of the Members he read out the difference in the question asked of the GP.

The appellant did not believe that the testing equipment at the Optometrists he attended on 2 June 2011 was fitted correctly, unlike the Optometrists he attended in Cambridge 3 years previously.

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 able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant had held a Breckland Council Hackney Carriage/Private Hire drivers licence since October 2008. He applied to renew the licence in October 2011.
2. A Medical Report dated 17 October 2011 indicated that the appellant was not fit to drive Group 2 vehicles which included taxis and private hire vehicles.
3. A letter dated 27 October 2011 requested clarification of the appellant's medical condition.
4. A letter dated 29 June 2011 from the DVLA indicated that the appellant was eligible to drive cars.
5. The evidence available to the Committee confirmed that the appellant could not satisfy the requirements of the Council's relevant policy.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire drivers licence would not be renewed, as the appellant failed to satisfy the relevant standard for eye sight as set down in Breckland Council's Licensing Policy, and was therefore found not to be a fit and proper person able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver.

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.

It was explained to the appellant that the Committee took no view in granting extra time to obtain a further eye sight test. However if he did undertake one, and obtained an alternative pair of glasses following which he believed he could meet the required medical

standard, he would need to supply evidence to the Committee and re-apply.

Some Committee Members were concerned that the appellant would be able to continue to drive during the Appeal period of 21 days from the date on which the notice of the decision was given.

The appellant, his employer and the Licensing Officer were asked to leave the room, whilst the Committee discussed the matter further.

When they returned, the appellant was advised that on advice from the Solicitor and after further discussion, the Committee agreed the appellant did have the right to the appeal period of 21 days.

23/12 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 who was accompanied, along with the Licensing Officer and Mr P Mason, the Council's Solicitor.

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

Patrick O'Brien, Licensing Officer presented the report which was to consider 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 under any other reasonable cause, due to the failure of the licence holder to comply with the conditions attached to his Hackney carriage vehicle.

The principal consideration was the appellant's continual breach of licensing conditions, his untruthfulness regarding ongoing insurance cover and the manner of his disposal of the Hackney Carriage.

The appellant stated he had prepared a written statement which was tabled at the hearing, and was read out by the Chairman. The letter, dated 22 February 2012, had in fact been written by another Hackney Carriage Proprietor and the appellant was a driver for his company.

A second letter from the licensed driver who had had vehicle HV0123 transferred to him, was read out by the Chairman. In response to the content of the letter, the Licensing Officer said that most of it was not relevant to the hearing and that the author had written a letter of complaint which had been dealt with separately.

Cllr Sherwood declared a personal and prejudicial interest by virtue of being the Chairman of the Licensing Committee as he had

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knowledge of the author of the second letter from the licensed driver, and therefore left the room.

The Licensing Officer was not aware of any offer of a temporary address having been provided by the appellant. He explained the requirement was that notice had to be given in writing to the Council by the driver every time they moved, and that telephone notification was not accepted.

The appellant stated when he spoke to the Call Centre they advised him they would not accept a temporary address as they required a permanent one and that he did not need to meet anyone in person. He had kept a Licensing Officer informed he was at no fixed abode and completed the appropriate forms in Thetford of his change of address.

Given that all calls received by the Call Centre were recorded for training and general purposes a Councillor asked if those could be accessed to determine what was said during the telephone conversation the appellant had with them. However in the Conditions issued to the appellant when his Hackney Carriage/Private Hire driver's licence was issued, it did state that a licence holder on changing address shall notify the Council in writing of such a change within 7 days.

The appellant advised that during the time the vehicle was uninsured it had been parked up, as it could not be driven as the battery had been removed. He had asked for "overlap" insurance to cover it, although having contacted his insurance company since, they advised him they had no record of him asking for 3-4 weeks "overlap" insurance. He was not aware that the vehicle was uninsured until he was informed by Breckland Council. He took out the "overlap" insurance by phone and the insurance company had his new address details. He had never had any issues with his insurance before.

The Licensing Officer stated that they had never been told of any "overlap" insurance, only that the vehicle would be insured. At no stage did they receive an application for HV0213 to be re-assigned or issued to a second party.

Having heard all the evidence, the Committee withdrew to consider their options.

After considering the matter the Committee returned including Cllr Sherwood. The Chairman stated that in view of the information provided to them, in the circumstances it was :

RESOLVED that a decision would be deferred until the next Appeal Committee scheduled to take place on 4 April 2012, to allow the Licensing Officer time to carry out investigations covering the period in question and to determine what

information was held with regard to the records kept of calls received.

The Licensing Officer was asked to prepare a full report for the meeting on 4 April 2012 which was to include his findings following his investigations.

24/12 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 who was accompanied by his daughter, the Licensing Officer and Mr P Mason, the Council's Solicitor.

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

The Solicitor advised Members they had enough information before them, and would not take into account the spent convictions when determining the case.

Patrick O'Brien, Licensing Officer presented the report which was to consider 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 under any other reasonable cause, due to the failure of the holder to notify the Licensing Authority of his driving convictions and his driving record whilst holding a Hackney Carriage/Private Hire driver's licence.

He advised the Committee that just prior to the hearing having commenced that morning, the appellant had informed him he had received a further SP30 speeding offence on 19 November 2011 for which a fixed penalty of £60 had been imposed along with 3 points. The offence would be spent on 19 December 2016. The latest conviction therefore brought the total to four offences with a total of 12 points. The Licensing Team had not been told of the offence prior to the hearing.

The principal consideration was whether the safety of the public might be at risk, through the appellant repeatedly incurring motoring convictions.

The appellant had prepared a written statement which was tabled at the hearing and it explained details of the appellant's personal circumstances at the time of the offences.

When asked by a Councillor whether he was aware that having read the booklet of conditions issued to him, he should have notified

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Breckland Council in writing of any conviction, caution or driving offence imposed on him during the period of the licence within seven days of the conviction, he replied yes, but it was only at the time he had received the paperwork for the hearing.

Committee Members did not understand why the appellant was not aware of the condition to notify the Licensing Team of any convictions having previously appeared before the Committee on 25 January 2006, at which time conditions he needed to adhere to would have been discussed.

The appellant advised that with regard to the conviction on 6 July 2008 he had taken his mobile phone off of loud speaker as passengers in the vehicle had been using foul language. With regard to the conviction dated 18 December 2010 he had been driving at about 43mph in a 30mph limit. He was an experienced driver and viewed all the offences he had incurred as serious. His vehicle was now fitted with blue tooth mobile phone capability. He was employed by one of his daughters who was aware of his driving record.

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 able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver.

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The appellant had held a Hackney Carriage/Private Hire drivers licence since at least 1998.
2. He was aware that any conviction, caution or driving offence imposed on him during the period of the licence should be notified to Breckland Council in writing within seven days of the conviction.
3. He failed to notify the Licensing Authority on four occasions of relevant convictions.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire drivers licence would not be renewed, as he had failed to satisfy the relevant driving standards required of a holder of a driver's licence issued by Breckland District Council as the Licensing Authority.

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.

25/12 REVOCATION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE AND HACKNEY CARRIAGE/PRIVATE HIRE VEHICLE LICENCES

Cllr Sherwood declared a personal and prejudicial interest in the item by virtue of knowing the family reasonably well and that they had rented a business from Swaffham Town Council. He left the room.

Cllr Duffield was not present for the item.

The appellant was not present at the hearing. The Committee noted that all appropriate efforts and attempts had been made to contact the appellant with regard to the hearing but all had been to no avail. No apologies had been received from the appellant. It was decided to continue with the hearing and consider the application in his absence.

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

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

Patrick O'Brien, Licensing Officer presented the report which was to consider the revocation of a Hackney Carriage/Private Hire driver's licence in accordance with Section 61(1)(a)(ii) and (b) of the local Government (Miscellaneous Provisions) Act 1976. In addition to consider the Revocation of 2 Hackney Carriage vehicle licences and 2 Private Hire vehicle under Section 60(1)(b) and Section 60(1)(c).

The principal consideration in the case was the appellant's continual breach of licensing conditions.

The Licensing Officer advised of further background information in that complaints had been received that vehicles were being driven by others. One of the vehicles was being driven legally by a brother of the appellant.

Having heard all the evidence given by the Licensing Officer, the Committee withdrew to consider their options. Members would apply the statutory test to the application to determine if they considered 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 and Proprietor.

After considering the matter the Committee returned.

In the absence of the appellant, the Solicitor advised the following findings of fact :

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1. The appellant had held a Breckland Council Hackney Carriage/Private Hire driver's licence since at least 1 February 2007.
2. All licences except the appellant's driver's licence were issued to The Shambles, Market Place, Swaffham. There was evidence in November 2011 that the operation closed and a new site was to be opened in Sporle.
3. There had been no contact by the appellant with the Licensing Authority since at least November 2011.
4. Letters from the Licensing Team sent on 3 January 2012 were returned undeliverable on 10 January 2012.
5. Two unfit vehicle notices were served on 30 January 2012 on licensed vehicles HV107 and HV07.
6. The appellant had failed to notify the Local Authority of the change in Operators' address.
7. The appellant had failed to notify the Local Authority of changes in status to the vehicles.
8. The appellant had failed to notify the Local Authority of his current address.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire driver's licence, Hackney Carriage/Private Hire Vehicle licences and Operators Licence be revoked, on the grounds that the Committee were satisfied that the appellant was not a fit and proper person able to drive and to perform the duties expected of a Breckland Council Hackney Carriage/Private Hire driver and Proprietor under the Local Government (Miscellaneous Provisions) Act 1976.

In the absence of being able to locate a responsible person, the Committee took the view that the revocations would take place immediately.

26/12 DATE OF NEXT MEETING

It was noted that the next meeting would be held on Wednesday 4 April 2012 at 10.00 a.m in the Norfolk Room.

The meeting closed at 3.10 pm

CHAIRMAN