

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 20 October 2010 at 10.00 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham**

PRESENT

Mr P.S. Francis (Chairman)
Mrs J. Ball

Mr I. Sherwood (Vice-Chairman)
Mr S.G. Bambridge

Also Present

Mr P. Mason

In Attendance

Mr Philip Mason
Julie Britton
Tiffany Bentley
Jane Osborne

- Solicitor
- Senior Committee Officer
- Senior Licensing Officer
- Committee Officer

74/10 MINUTES (AGENDA ITEM 1)

The Minutes of the meeting held on 9 September 2010 were confirmed as a correct record and signed by the Chairman.

75/10 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Mr R. Duffield, Mrs L. Monument and Mrs S. Butcher.

The Chairman welcomed Mr. G Bambridge to his first Appeals Committee meeting as substitute for Mr. R. Duffield.

76/10 EXCLUSION OF THE PRESS AND PUBLIC (AGENDA ITEM 7)

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 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.

**77/10 DETERMINATION OF A REVOCATION OF A HACKNEY
CARRIAGE/PRIVATE HIRE DRIVERS LICENCE (AGENDA ITEM 8)**

Mr P Mason was in attendance as the Council's Solicitor.

For clarification purposes, the Solicitor afforded Members with advice as requested at the previous meeting.

The appellant's Hackney Carriage/Private Hire drivers licence had already been suspended by the Licensing Team. This had been due to the practitioner's letter received earlier in the year which stated that the appellant had not met the required Group II standards.

Following his appearance before the Appeals Committee on 9th September 2010, the Committee had decided to adjourn the matter until further

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information had been obtained from the Practice Manager at the surgery that the appellant attended.

The letter had been received by the Licensing Team on 18th October 2010 and was circulated at the meeting.

The letter clarified a number of matters but not all, and given the unique situation of the appellant's case, the Solicitor asked Members if they would be prepared to consider this as an exception.

The Medical Practitioners 'At a glance Guide to Medical Standards of Fitness to Drive issued by the DVLA in March 2010 (attached at appendix C) stated that under Group II any new applicants or existing drivers on insulin should be barred in law from driving Light Goods vehicles or Passenger Carrying Vehicles. "Exceptional case" drivers could apply for or renew their entitlement to drive C1/C1E (small lorries) subject to meeting all the "Qualifying conditions".

If the Committee was mindful not to consider the appellant as an "Exceptional Case", the licence would have to be revoked.

The Solicitor provided the reasons why it would be appropriate to consider this case as an exception:

- 1 The length of time the appellant had had his licence
- 2 There had not been any problems with his driving ability
- 3 He was a responsible person (with regard to his sugar levels)
- 4 This was his only source of income
- 5 If the DVLA guidance was applied, the Appellant would have to be examined every 12 months by a hospital consultant (which he had not done thus far)

If Members were mindful to treat this as an "Exceptional case", then the appellant would have to be asked whether he would, in the first instance, be prepared to be seen by such a consultant. In the interim, Members needed to decide what should be done with the appellant's current licence – to continue with the suspension or be allowed to drive until the consultant's report was received. The Vice-Chairman felt that such a decision could not be made until the Appellant had seen the consultant.

The Hearing then took place in the presence of the appellant, his wife and employer.

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

The Chairman explained to those present the meaning of an "Exceptional case". He further explained that if the Committee decided not to treat this as an "Exceptional case" the Hackney Carriage/Private Hire Licence would have to be revoked. If the Committee agreed to the contrary, the licence would remain suspended until the consultant's report was received.

The Senior Licensing Officer (SLO) drew Members' attention to the last paragraph of the Practitioner's letter which stated that he would be prepared to refer the appellant to a consultant. The SLO reported that the Licensing Team had been in contact with the hospital and the GP, and as

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there was a waiting list, it could not be determined how long it would be before the appellant could be seen.

The appellant was given the opportunity to put his case forward.

He asked Members to refer to the Practitioner's letter which referred to the DVLA's guidelines which stated that all applicants must be in possession of a full driving licence for at least the preceding 12 months. The appellant stated that he had passed his driving test in 1990. He explained that he had been closely monitored by his doctor and that he had also been monitoring himself since being diagnosed as a diabetic.

The Chairman brought to the appellant's attention page 20 of Appendix D of the report – the qualifying conditions that the appellant must meet; one of which was that if Members decided to treat him as an exception, would he be prepared to be examined every 12 months by a hospital consultant who specialised in diabetes. In response, the appellant said that he would.

The Vice-Chairman still felt that the Committee, even with the Practitioner's letter, did not have proof that the appellant met with the required standards.

In response to a concern by the appellant's wife, the Vice-Chairman afforded her with the relevant information.

The appellant's employer was given the opportunity to speak. She felt that her employee deserved to have his licence back as, in her opinion, he was fit to drive and he had been doing so for the past eight years. She was happy with his work which consisted of driving children to and from school for two hours per day of which he undertook with a safety aide. The Chairman responded by stating that this Hearing was being conducted in relation to public safety.

The Solicitor asked the employer if the appellant was licensed with another authority and whether his work had been extended. The employer answered no to both questions.

The Vice-Chairman asked how much of the appellant's employment required the Hackney Licence. In response, both the employer and the appellant's wife said that the Hackney Carriage Licence did not apply to the school runs as no fares were paid to the driver.

The appellant stated that he had other employment but the two hours work he did each day was 80% of his income.

The appellant, his wife and employer together with the Senior Licensing Officer were asked to leave the room so that the decision of this case could be considered in private session.

After discussing the case in great detail, the meeting returned to open session, and in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act, 1976, it was:

RESOLVED that:

- 1) the appellant must be required to seek an examination by a hospital Consultant, who specialises in diabetes;

- 2) the Consultant must require sight of the appellant's blood glucose records for the last three months;
- 3) the doctor to be made aware of the referral and the need for them to supply records to the Consultant
- 4) the appellant's licence to remain suspended until the Consultant's report has been received;
- 5) the findings of the Consultant's report, if positive, must be considered by the Appeals Committee at a future hearing; and
- 6) if negative, the decision be delegated to the Licensing Team and the licence will be revoked.

The reasons for the decision were that the Appeals Committee had applied the "Exceptional Case" rules as advised by the DVLA in determining the application.

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Tiffany Bentley

The meeting closed at 11.15 am

CHAIRMAN