

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 20 July 2011 at 10.00 am in
Norfolk Room, Conference Suite, Elizabeth House, Dereham NR19 1EE**

PRESENT

Mrs S Armes	Mr I. Sherwood (Vice-Chairman)
Mr S.G. Bambridge	Mr M A Wassell
Mrs L.H. Monument (Chairman)	Mr W R J Richmond (Substitute Member)

In Attendance

Mr B J English	- Breckland Councillor
Mr Philip Mason	- Solicitor
Patrick O'Brien	- Technical Officer - Licensing
Tiffany Bentley	- Senior Licensing Officer
Fiona Inston	- Principal Environmental Health Officer/ Temporary Manager of Licensing Team
Debbie Anderson	- Assistant Licensing Officer
Jane Osborne	- Committee Officer

17/11 MINUTES

The Minutes of the meeting held on 9 June 2011 were confirmed as a correct record and signed by the Chairman.

18/11 APOLOGIES

An apology for absence had been received from Mr R Duffield.

19/11 DECLARATION OF INTEREST

With regard to Agenda Item 8, Councillor Monument recognised the applicant as she lives in Dereham. She did not however have a personal or prejudicial interest in the item.

With regard to Agenda Item 10, Councillor Sherwood advised that as he lived in Swaffham and was a regular user of taxis, he may have used the taxi driven by the appellant. He did not however have a personal or prejudicial interest in the item.

20/11 NON-MEMBERS WISHING TO ADDRESS THE MEETING

Councillor William Richmond was in attendance as a substitute for Councillor Duffield but he made it known that he would refrain from taking part in the meeting and would not vote, and was present to observe only.

Councillor Bernard English was in attendance and would observe only, he did not take part in the meeting and did not vote.

The Solicitor explained the procedure to the Committee with regard to Substitutes. The Chairman and Committee Members asked if Breckland Council's Constitution had changed with regard to Substitutes on the

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<p>Appeals Committee, and the Democratic Services Team Leader would be contacted to obtain the information. One Member of the Committee had never known a Substitute be present on an Appeals Committee in 9 years.</p> <p>21/11 <u>HEARING PROCEDURES</u></p> <p>Noted.</p> <p>22/11 <u>EXCLUSION OF PRESS AND PUBLIC</u></p> <p>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.</p> <p>23/11 <u>APPLICATION FOR THE RENEWAL AND RESTORATION OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE</u></p> <p>Councillor Monument recognised the applicant as she lives in Dereham. She did not however have a personal or prejudicial interest in the Agenda item.</p> <p>The Committee heard the application in accordance with the Council's agreed procedure.</p> <p>The Hearing took place in the presence of the applicant, two Licensing Officers and the temporary Manager of the Licensing Team. Mr Phil Mason was also in attendance as the Council's Solicitor.</p> <p>The applicant was asked if he was happy for Councillors Richmond and English to be present to observe proceedings for their educational benefit only, they would not take part at all in the meeting or the decision making process. The applicant confirmed that he was happy for both Councillors to remain.</p> <p>The applicant confirmed that he had received all relevant documentation and letter.</p> <p>The Licensing Officer presented the report, which was to determine an application for the renewal of, and lifting of a suspended Hackney Carriage/Private Hire driver's licence. The applicant had held a Breckland Council Hackney Carriage/Private Hire driver's licence since 2002. The report explained in the interest of public safety, the applicant's licence was suspended in May 2010 when they were notified by Norfolk Constabulary that 3 charges were pending against him. During the period of suspension the applicant's licence became due for renewal. CRB checks had been carried out as part of the renewal process which showed no convictions or cautions. On 3 June 2011 Norwich Crown Court confirmed that the jury had found him not guilty on all 3 counts.</p> <p>The applicant was given the opportunity to put his case forward, he advised that he had held a Breckland Council Hackney Carriage/Private Hire driver's licence for 16 years, but the Licensing Officer advised she was unable to verify that from computer records. He stated that he had been surprised and shocked at the charges as he had not been in the country during some of the time. In 16 years he had received no other offences</p>	<p>Jane Osborne</p>

apart from one speeding fine about 3-4 years ago.

Given that the applicant had been found not guilty by the Crown Court, the Chairman asked the Committee that with regard to point 3.4.2 on page 10 of the Agenda, the word 'further' within the fourth sentence should be removed and if Members were minded to lift the suspension and renew the Hackney Carriage/Private Hire drivers Licence for a limited period to enable the applicant to show he is a responsible person, it would be requested that the authority to renew be delegated to officers, providing the applicant commits no offences and his standard of driving is that expected of a licensed Breckland driver.

Having heard everything the applicant 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 applicant was a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence).

After considering the matter, the Committee returned and the Solicitor advised in summary that :

- The applicant had held a Hackney Carriage/Private Hire driver's licence for at least 16 years
- In May 2010 the applicant was charged with 3 offences
- The applicant's licence was suspended in May 2010 and remained suspended
- The applicant applied for the renewal of a Hackney Carriage/Private Hire driver's licence in May 2011
- Relevant checks had been carried out and no convictions or cautions had been recorded
- The Licensing Team received information in June 2011 that the applicant had been cleared of all charges

Accordingly it was,

RESOLVED that the suspension be lifted and the Hackney Carriage/Private Hire driver's licence be renewed in accordance with the application.

24/11 APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE

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

The Hearing took place in the presence of the applicant, two Licensing Officers and the temporary Manager of the Licensing Team. Mr Phil Mason was also in attendance as the Council's Solicitor.

The applicant was asked if he was happy for Councillors Richmond and English to be present to observe proceedings for their educational benefit only, they would not take part at all in the meeting or the decision making process. The applicant confirmed that he was happy for both Councillors to remain.

The applicant confirmed that he had received all relevant documentation

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and letter.

The Licensing Officer presented the report, which was to determine an application for the grant of a Hackney Carriage/Private Hire driver's licence. The report explained that the applicant's driving licence showed an unspent endorsement.

The Chairman advised the Committee that they needed to consider whether to take into account spent as well as unspent convictions to determine the application, and all Members agreed they would, so the Licensing Officer gave a verbal explanation of the three spent convictions and cautions.

The applicant was given the opportunity to put his case forward. He advised that since he had made the mistakes 4-5 years ago, he had not done so again. He had worked in 2-3 small companies and wanted to undertake taxi driving to increase his income.

Having heard everything the applicant 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 applicant was a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence).

After considering the matter, the Committee returned and the Solicitor advised the findings of fact :

- The applicant made a first application for a Hackney Carriage/Private Hire driver's licence in 2011
- The applicant's driving licence showed three endorsements
- In the course of hearing the evidence, the Committee agreed to consider previous convictions and cautions
- In total the applicant had been convicted of four relevant offences

In applying Breckland Council's Convictions Policy, Appendix A on page 15 of the Agenda was referred to by Committee Members with regard to paragraphs (a) Minor Traffic Offences, (c) Drunkenness with motor vehicle and (e) Drugs, and with regard to all the circumstances of the case and having heard the evidence

Accordingly it was,

RESOLVED that the Committee were not satisfied that the applicant was a fit and proper person under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 for the following reasons

1. The applicant's record does not demonstrate that he is a fit and proper person in light of evidence provided at the hearing
2. Safety of the public is of paramount importance of the Licensing Authority at Breckland Council

The Chairman advised the applicant that given there were four offences for the Committee to consider, they were concerned that the applicant had not left his past behind him, and therefore he needed to demonstrate two years of good behaviour before applying again to be considered for a Hackney

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Carriage/Private Hire driver's licence.

25/11 REVOCAION OF A HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE

The appellant did not arrive for the Hearing. The Committee adjourned to allow a Licensing Officer to contact the appellant by telephone.

After speaking with the appellant, the Licensing Officer advised that despite all relevant documentation having been sent to him at the address he provided when he was interviewed by the Licensing Officer on 17 June 2011, the appellant advised he lived at a different numbered address in the same street, and that he had not moved, and had always lived there.

He was given the provisional date of Wednesday, 7 September 2011 when the next Appeal Committee would be held, and he confirmed to the Licensing Officer that he would attend.

The Licensing Officer advised the appellant that all relevant documentation would be sent out to him again, and he would be asked to acknowledge receipt.

The Agenda item was therefore deferred.

26/11 SUSPENSION/ REVOCATION OF A HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE

The Agenda item had been withdrawn prior to the Committee meeting due to the appellant being unable to attend. The appellant had been informed it would be deferred until the next Committee meeting, scheduled to take place on Wednesday 7 September, 2011.

27/11 TIMETABLING OF AGENDAS

Provisional timings had been included on the Agenda and Members considered whether this should be continued for future meetings. The item was discussed at length and due to various reasons such as hearings taking various lengths of time, some applicants not arriving for Hearings, cases could be heard in different order to that published on the Agenda, it was not possible to predict what time each case would be heard.

RESOLVED that timings would not be put on future Agendas.

The Licensing Officer was asked that in future on documentation sent to applicants/appellants they are asked to let the Licensing Team know in writing whether or not they intend to attend the Hearing. They should also be informed that Agenda items might be heard in a different order to that published, and to make them aware that the Hearing might proceed in their absence.

28/11 NEXT MEETING

It was noted that the next meeting would be on Wednesday 7 September, 2011 at 10.00 a.m in the Norfolk Room, Conference Suite, Elizabeth House, Dereham.

The meeting closed at 11.50 am

Tiffany
Bentley

CHAIRMAN