

BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

**Held on Wednesday, 30 November 2011 at 10.00 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham**

PRESENT

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

In Attendance

Mr Philip Mason	- Solicitor
Helen McAleer	- Senior Committee Officer
Patrick O'Brien	- Licensing Officer

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36/11 MINUTES (AGENDA ITEM 1)

The Solicitor referred to the final bullet point on page 4 and advised that the Race Relations Act 1976 had been incorporated into the Equality Act 2010.

Subject to that amendment, the Minutes of the meeting held on 7 September 2011 were confirmed as a correct record and signed by the Chairman.

37/11 APOLOGIES (AGENDA ITEM 2)

Apologies for absence had been received from Mr R Duffield. Mr B English was present as his substitute.

It was clarified that named substitutes had been appointed at the Council meeting held on 23 June 2011. No Labour/Other substitute had been nominated. The Chairman sought clarification on whether it would be acceptable for a Conservative substitute to stand in for the Labour/Other Member if necessary. Mrs Armes (Labour) agreed to raise that matter and report back.

38/11 URGENT BUSINESS (AGENDA ITEM 3)

None.

39/11 DECLARATION OF INTEREST (AGENDA ITEM 4)

Mr Sherwood declared a personal and prejudicial interest in Agenda Item 8 by virtue of having been copied in on a letter of complaint about Council procedures from the applicant to his Member of Parliament, for whom Mr Sherwood worked as an aide.

40/11 NON-MEMBERS WISHING TO ADDRESS THE MEETING (AGENDA ITEM 5)

None.

41/11 HEARING PROCEDURES (AGENDA ITEM 6)

The procedures were noted.

42/11 EXCLUSION OF 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 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.

43/11 APPLICATION FOR A GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE (AGENDA ITEM 8)

Mr Sherwood left the room before this item was discussed.

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

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

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

The Licensing Officer presented the report which was to determine an application for the grant of a Hackney Carriage/Private Hire driver's licence in accordance with Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976. (Not section 53(1)(b) as referred to in the report.)

On his signed statutory declaration the applicant had failed to declare two unspent driving convictions. The Chairman said it was the Committee's duty to consider those two offences and invited the applicant to explain the circumstances.

The applicant advised that both offences had occurred in Norwich. There had been many speed limit changes in the City and he had been caught out. In mitigation he explained that there had been no significant indication of the changes and that one speed limit sign had been partially obscured by overhanging trees.

With regard to his failure to declare the convictions on his application, he apologised that he had misread the form and the omission had been unintentional.

The Chairman advised that the Council was extremely strict regarding the filling in of forms, particularly with regard to driving offences. She also pointed out that if the licence was granted, any further convictions must be notified to the authority within seven days to enable the Council to keep tight control over the people it licensed.

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 applicant was

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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. Having considered all the evidence it was clear that the applicant had found the speed restriction changes in Norwich confusing
2. The Committee accepted that the applicant had not been as observant as he should have been
3. the Committee accepted that the applicant had committed a genuine mistake in omitting the offences from his declaration and they were also aware that he had not committed any further offences
4. The Committee accepted that the applicant was a fit and proper person

Accordingly it was:

RESOLVED to

- (1) grant a Hackney Carriage/Private Hire driver's licence in accordance with Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976; and
- (2) draw the applicant's attention to the necessity of reading all the literature provided and of reporting any further convictions of any kind within seven days.

Question to the Licensing Officer

Mr Sherwood returned to the room.

The Chairman asked if the explanatory notes attached to the statutory declaration advised applicants that motoring offences should be included. She suggested that the words 'including motoring offences' should be included after the word 'offence' in both sections 1 and 2 of the statutory declaration for clarity.

The Licensing Officer agreed to amend the forms as requested.

44/11 APPLICATION FOR A GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE (AGENDA ITEM 9)

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

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

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

The Licensing Officer presented the report which was to determine an application for the grant of a Hackney Carriage/Private Hire driver's licence in accordance with Section 51(1) of the Local Government (Miscellaneous Provisions) Act 1976. (Not section 53(1)(b) as referred to in the report.)

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On his signed statutory declaration the applicant had failed to declare one spent and two unspent driving convictions. The Licensing Officer advised that Hackney Carriage/Private Hire drivers were an exempt occupation under the Rehabilitation of Offenders Act 1974 meaning that spent convictions could be taken into account.

The Chairman told the applicant that the prime duty of the Committee was to ensure public safety. They also needed to be assured that he was honest. She asked why he had not declared his motoring convictions.

The applicant explained that he believed the first two convictions were already spent and did not need to be mentioned. The third one he knew was still valid but he had forgotten to mention it.

The Chairman asked him why two convictions were so close and he explained that he had been doing three jobs at the same time then. He had also just moved to Cambridge where there were a lot more speed cameras. He now took more care in Cambridge and had received no more convictions.

The Chairman advised that he needed to be careful everywhere, not just where there might be speed cameras. The Committee needed to be sure that passengers would be safe. She stressed the requirement to report any further convictions within seven days if the licence was granted. She asked if he understood the importance of doing that and he confirmed that he understood.

A Member asked the applicant if he had ever held a Hackney Carriage/Private Hire drivers licence in Cambridge or anywhere else and the he said no.

The Chairman asked why the application was being made to Breckland when the applicant lived in Cambridge and he explained that his partner lived in Thetford.

Finally a Member asked the applicant to clarify that the reason he had not declared his convictions was because he thought the three year time-spent rule applied and the applicant agreed that that was the case.

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 applicant was a fit and proper person to hold a Hackney Carriage/Private Hire driver's licence.

After considering the matter the Committee returned.

Following their discussions the Chairman sought clarification on behalf of the Committee that the applicant had never been refused a licence or applied to another Authority. He confirmed that he had not.

The Solicitor advised the following findings of fact:

1. Notwithstanding the fact that he had nine points on his licence, the applicant believed his convictions were time spent

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2. The Committee believed that he had not intended to deceive
3. The Committee was concerned that the applicant should observe all the speed restrictions within the Breckland District.

He further explained that the Licensing Authority had the power, under Section 51(2) of the Local Government (Miscellaneous Provisions) Act 1976 to attach conditions to a Licence that they considered reasonably necessary.

RESOLVED

- (1) to grant the licence initially for twelve months only
- (2) at the end of the twelve months to carry out a second enhanced CRB check
- (3) to delegate authority to the Licensing Team to issue the remaining term of the licence, subject to a satisfactory CRB check

The reason for adding the conditions was that the Committee needed to be convinced that the applicant was a fit and proper person to hold a licence.

The Solicitor advised that the applicant had the right to appeal against the conditions under Section 52(2) of the Local Government (Miscellaneous Provisions) Act 1976.

The meeting closed at 11.38 am

CHAIRMAN