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BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

Held on Wednesday, 4 April 2012 at 10.00 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham

PRESENT

Mrs S Armes
Mr S.G. Bambridge
Mr R.W. Duffield

Mrs L.H. Monument (Chairman)
Mr M. A. Wassell
Mr W Richmond

Also Present

Mr T Jermy - Ward Representative

In Attendance

Mr Philip Mason - Solicitor
Patrick O'Brien - Licensing Officer
Jane Osborne - Committee Officer
Gilbert Addison - Tree & Countryside Officer
Aida Li - Law Student
Celestina Mahovic - Law Student

27/12 MINUTES

With regard to minute number 22/12 Application for the Suspension/Revocation of a Hackney Carriage/Private Hire Driver's Licence, the third paragraph on page 6, it was felt the third sentence would be more easily understood if it read, 'he chased progress over the telephone with them' rather than, 'he progress chased it over the telephone with them'. Also, the first sentence of the third paragraph should read 'He explained he was short sighted with an astigmatism' rather than 'stigmatism'.

Subject to the above, the Minutes of the meeting held on 22 February 2012 were confirmed as a correct record and signed by the Chairman.

28/12 APOLOGIES

Apologies for absence had been received from Cllr Sherwood, Cllr W Richmond was in attendance as his substitute.

29/12 DECLARATION OF INTEREST

None were made.

Action By

30/12 NON-MEMBERS WISHING TO ADDRESS THE MEETING

Cllr T Jermy was in attendance as Ward Representative for Thetford-Saxon and would speak with regard to Agenda Item 5.

Aida Li and Celestina Mahovic, Law students were in attendance for training purposes only, as they were undertaking work experience at Overburys Solicitors.

31/12 HEARING PROCEDURES

The procedures were noted.

32/12 APPEAL AGAINST TREE PRESERVATION ORDER (TPO) 2012 NO. 1 BY TULIP LTD

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

The Hearing took place in the presence of the Tree and Countryside Officer (TCO) and Mr P Mason, the Council's Solicitor. The appellant was not present.

The Solicitor explained the powers under which the Committee were able to confirm a TPO and gave them guidance on the key criteria that they would need to bear in mind.

Gilbert Addison, TCO gave a brief summary of the report which sought authorisation to confirm Tree Preservation Order (TPO) 2012 No. 1. He advised that subsequent to writing the report, an outline planning application had been submitted. When asked by the Chairman if there would be any likelihood of nuisance from tree roots in the car park, he believed it could be variable, as it would depend on the surface of the car park and any future treatment of the trees, but added the more permeable the surface, the less likely there would be a problem with roots.

Cllr Armes, Ward Representative, could not understand why Tulip Ltd refuted the TPO as the site was now in the hands of Location 3 Developers. Often supermarket sites and industrial areas had avenues of trees incorporated within them and it was her understanding that the space currently occupied by the trees was going to remain as car parking. Trees were shown on plans she viewed at a meeting at the Guildhall in Thetford. The trees were of a visual value, and there was a shortage of trees in the area.

The TCO advised that on the outline planning application the trees had been removed.

Cllr T Jermy, Ward Representative, advised that he had been contacted by a number of residents with regard to the potential loss

of the trees, and made the Committee aware of trees that had been removed from the estate a neighbouring one. Roads in the area were named after several different types of trees, and stated "we like trees in Barnham Cross", and added that there were no London Plane trees situated that side of Thetford. He hoped the developer would be open to amend their plans. Cllr Jermy left the meeting.

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

After considering the matter the Committee returned.

The Solicitor advised the following findings of fact :

1. The trees currently provided amenity value.
2. The trees appeared to be in good health.
3. The outline planning application for re-development of the site was at a very early stage and there was no certainty it would progress further.

In the circumstances it was :

RESOLVED that Tree Preservation Order 2012 No. 1 be confirmed.

33/12 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.

34/12 SUSPENSION/REVOICATION 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 Licensing Officer and Mr P Mason, the Council's Solicitor. The appellant was not able to be present but had sent a letter dated 22 March 2012 to the Licensing Team which had been circulated to Members prior to the meeting, in which he explained the circumstances that caused him to exceed the statutory speed limit and why he did not make Breckland Council aware in writing of the conviction. The appellant was happy for the Appeal to be heard in his absence.

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 occurrence of a motoring conviction and the failure to notify the Licensing Authority of that conviction.

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 speeding offence.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that 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 license issued by Breckland Council since July 2010.
2. The appellant had been convicted of a speeding offence on 25 August 2011.
3. The Local Authority had no record of ever being notified of the speeding conviction.
4. The appellant was satisfied to have the matter dealt with in his absence as advised in his letter dated 22 March 2012.
5. The appellant admitted the fact that he had not informed the Local Authority of the speeding conviction, although he had signed for all the relevant documents.

In the circumstances it was :

RESOLVED that the appellant's Hackney Carriage/Private Hire driver's licence be suspended for a 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.

Reasons for the decision were that :-

1. The appellant had failed to notify the Licensing Authority of the speeding conviction
2. The safety of passengers in vehicles licensed by Breckland District Council was of paramount importance

The appellant would be advised that 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.

**35/12 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 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 and was happy for Aida Li and Celestina Mahovic, Law students to be present for the hearing for observation/training purposes only.

Patrick O'Brien, Licensing Officer summarised 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 appellant had appeared before the Appeals Committee on 22 February 2012 at which time it had been resolved to defer a decision to allow the Licensing Officer time to carry out further investigations.

The principal consideration was the appellant's continual breach of licensing conditions including failure to notify of a change of address, his untruthfulness regarding ongoing insurance cover and the manner of his disposal of the Hackney Carriage.

Enquiries had subsequently been made via the Call Centre Manager and no reference was made relating to a 'temporary address' query. The Licensing Officer had therefore been unable to verify the appellant's claim that he had had a conversation with a member of Breckland staff regarding his proposed use of a temporary address.

Whilst the appellant advised he had never had problems as detailed in the report before and would not do so again, he did state that he had had previous problems with insurance companies where they did not enter details on their databases. He was not able to defend or explain why the Breckland Council Call Centre did not have any record of his phone call to them. Taxi driving was his only form of employment.

A Councillor asked the appellant why, when he assured the Assistant Licensing Officer on 6 December 2011 that the vehicle would continue to be insured by him, that on the same day it was cancelled. He replied by stating that he had asked his insurance company to overlap it and provide a free week's insurance, he provided them with his new address but he never asked them to cancel the insurance.

Having heard all the evidence, the Committee withdrew to consider their options. The Solicitor explained that 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 Chairman stated to the appellant that whilst he was given a copy of the Hackney Carriage and Private Hire Byelaws and Conditions Document, he appeared not to have read it. He was asked if he still had the Document and did he now realise he had to both read it and abide by it, to which he confirmed he did have it, and understood he needed to abide by it. He was advised that the Committee had seriously considered the revocation of his licence.

The Solicitor advised the following findings of fact :

1. The appellant had held a driving licence granted by Breckland District Council since August 2008.
2. The appellant failed to notify the Licensing Authority of his change of address contrary to the current bylaws in force.
3. The appellant failed to notify the Licensing Authority of the transfer of vehicle, contrary to current bylaws in force.
4. The appellant failed to ensure that adequate insurance was in place whilst a vehicle was in his control.
5. There was no evidence of any proper contact between the appellant and the Licensing Authority over a period of time, in connection with the administration of his licences.

In the circumstances it was :

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

Reasons for the decision were :

1. The safety of passengers in vehicles licensed by Breckland District Council was of paramount importance
2. The local Licensing Authority impresses on all licence holders, that licences under their control should be properly administered

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.

Action By

It was impressed upon the appellant that he must ensure at all times his insurance details were accurate and up to date and that he must notify Breckland District Council if he changed his address.

36/12 NEXT MEETING

It was noted that the next meeting would be held on Wednesday 16 May 2012 at 10.00 a.m in the Norfolk Room.

37/12 ANY OTHER BUSINESS

Members asked that in future when the Licensing Officers gave a brief summary of their reports they should bring to Members' attention the important aspects of the reports.

A confidential waste paper bin was requested to be made available to Councillors within the suite of Committee rooms at Elizabeth House.

The meeting closed at 11.50 am

CHAIRMAN