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BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

Held on Wednesday, 17 March 2010 at 10.00 am in
Norfolk Room, The Conference Suite, Elizabeth House, Dereham

PRESENT

Mrs J. Ball

Mr R.W. Duffield

Mrs L.H. Monument

Mr I. Sherwood (Vice-Chair, in the Chair)

Also Present

Mrs D. K. R. Irving

(as an Observer)

In Attendance

Stephanie Butcher

Sheila Cresswell

Mr P. Mason

- Principal Officer Licensing and Business Support
- Committee Officer
- Solicitor

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45/10 MINUTES (AGENDA ITEM 1)

The Minutes of the meeting held on 9 December 2009 were confirmed as a correct record and signed by the Chairman.

46/10 APOLOGIES (AGENDA ITEM 2)

An apology for absence was received from Mr P. Francis.

47/10 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 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.

48/10 APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE (AGENDA ITEM 8)

The Hearing took place in the presence of the applicant and his employer. Mr Phil Mason was also in attendance as the Council's solicitor.

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

The Principal Officer Licensing and Business (POLB) presented the report, which was to determine an application for the grant of a Hackney Carriage/Private Hire driver's licence.

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Having outlined the details of the case, which concerned the failure of the applicant to declare two separate convictions, the POLB explained that when the applicant had submitted his DVLA licence, three convictions were listed. However, as the licence was torn and could not be read in some places, the Licensing Officer had requested that the applicant obtain and submit a replacement licence. When this had been presented it was found to include a fourth conviction for “totting up”, which had resulted in a six month disqualification.

In addition, the enhanced Criminal Record Bureau check had revealed another conviction which was not considered spent under the Rehabilitation of Offenders Act 1974.

As neither of these convictions had been declared on the statutory declaration form which was submitted as part of the application process, two false declarations had been received.

In response to a question, the POLB explained that the “totting up” offence would have been the result of an accumulation of points.

Having confirmed that he had received copies of all relevant papers and that he had no matters pending, the applicant explained that with regard to the “totting up” offence, he had not been aware of this until 3-4 months’ ago. He had no idea that he had been disqualified from driving. He said that he had received no correspondence alerting him about this, nor had he been called to attend a Hearing or receive a fine. This conviction had therefore not been declared on his initial application form as he had been unaware of it. In fact, because he did not know about the ban, he was still driving at that stage.

It was agreed in general discussion that this seemed a rather bizarre situation. However, the Chairman reminded the applicant that for the purposes of this Hearing there was a need for him to satisfy the Committee that he was a “fit and proper” person as defined under the Town Police Clauses Act and the Local Government (Miscellaneous Provisions) act 1976.

The applicant, by way of background to this case, said that he had been out of work for about 18 months due to ill health. However, prior to this he had worked for a large transport company (for about six years). As was apparently the norm with such companies, any paperwork concerning fines etc, would initially be dealt with in the office. The company was then supposed to pass relevant documentation to individual drivers. However, as he had been completely unaware of having been disqualified, he could only assume that the paperwork had not been passed down to him at the time.

It was only when he had been requested to produce a duplicate licence that the disqualification had come to light – but he had already completed the application form by this time (and indeed he had been driving in the interim).

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He added that he had explained this situation to the East Anglian Traffic Commission when he had applied for a renewal of his Heavy Goods Vehicle licence.

With regard to the second conviction (which had come to light as part of the CRB checks), he gave some background, explaining that the offence had been committed many years ago. Since then he had had no further convictions or arrests. He had also married and started a family.

He apologised to the Committee, saying that there had been an oversight and he had not intentionally misled them.

The applicant's employer gave his own apologies to the Committee about this matter, saying that they had misunderstood the rules and that there had been an oversight: they understood the conviction to have been 'spent'.

In response to a question, the applicant confirmed that whilst working for the Transport company, any points would have been initially received in the office as they would be associated with the number plates. Individual drivers were therefore dependant upon being notified in terms of points and fines. It was highly likely that the 'totting-up' had happened without his knowledge because the paperwork had not been passed on.

When pressed in terms of how he had managed to get four speeding offences, he said that many lorry drivers were under enormous pressure to meet deadlines, especially when involved with multi-drops. He added that, in some cases, the speed limit for lorries could be less than that formally indicated on the road signs.

He confirmed that his first speeding offence had been when he was 17 years old and that, since then, he had not received any speeding convictions in a car.

The Chairman asked the applicant to confirm that he had fully understood the Statutory Declarations which he had signed.

The applicant confirmed that he had, but added that his understanding was that the CRB offence, which was now 15 years' ago, no longer had to be declared.

The POLB intervened at this stage, to ask the applicant to confirm that he had read paragraph 2 of the Statutory Declaration (attached to the report as Appendix E). Specifically, the words "... whether or not it is spent...". The Chairman also asked for clarification about the applicant's position on this.

The applicant admitted that he had made a mistake and that there had been an oversight: he had not read it properly. When pressed again by the Chairman, the applicant said if he had read the declaration properly and knew he had to declare this conviction, he still would not have done so. He admitted that he had not completed the form correctly. The

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Chairman said it appeared that the applicant had therefore chosen not to make the declaration.

In summing up, the applicant admitted that he had made a mistake on the form. He said that since the CRB conviction, which concerned an offence 16 years ago, he had tried to put his life back together. He had settled down and had had no brush with the law. He had not listed this conviction because he had hoped that it was behind him and he did not need to.

Before the Committee retired to consider the case, the solicitor confirmed that they would be concerned with the Findings of Fact and applying the relevant Council (i.e. 'Licensing Authority') policy.

Committee Members then adjourned for discussion, but re-assembled to seek further clarification on one matter.

The Chairman asked the POLB to provide details of the exact information which applicants were given in advance of making an application, and the extent to which key points were made.

The POLB produced copies of the application packs for Members to see, highlighting the various relevant areas - many of which appeared in bold and/or capitalised text.

The Chairman asked the applicant to confirm once again that he had received this pack, and the applicant did so.

Members then retired once more to consider their decision.

RESOLVED to refuse to grant the Hackney Carriage/Private Hire driver's licence.

The Chairman explained that, having read the report and heard the evidence presented at the Hearing, the Committee made the following findings of fact.

The Committee accepted the facts as set out in paragraphs 3.2.1 to 3.2.3 of the report. The Committee also pointed out that it had considered the offence committed in 1994, but that this was not, of itself, a factor in the decision (having applied it to the Council's policy as set out in Appendix A to the report).

The decision to refuse the licence was based on the applicant's failure to disclose relevant convictions on two occasions. Namely, the 1994 offence, and the 'totting-up' issue in 2008. This failure amounted to a degree of dishonesty which the Licensing Authority would not accept. In the circumstances the Committee considered that it had reasonable cause to refuse the applicant this licence.

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**49/10 APPLICATION FOR THE RENEWAL OF A HACKNEY
CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE (AGENDA ITEM 9)**

The Hearing took place in the presence of the applicant. Mr Phil Mason was also in attendance as the Council's solicitor.

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

Having ascertained that the applicant had received all relevant documentation and that he had no matters pending, the POLB presented the Report, which was to determine an application for the renewal of a Hackney Carriage/Private Hire Driver's Licence.

She explained the background to the case, drawing Members' attention to Condition 10 of the conditions attached to a Breckland Council Driver's Licence. This required drivers to notify the Council in writing of any conviction, caution or driving offence imposed on them "*within seven days of the conviction*".

The applicant had failed to do this on two occasions. It was only when the renewal application forms had been issued that he had contacted the Licensing team. The report stated that when this requirement had been specifically drawn to the applicant's attention he had replied that he had been aware of it, but "couldn't be bothered".

The POLB drew the Committee's attention to an error at para 3.1.6 of the report, where, on the final line of the main body of text, the word "driver" should replace "vehicle".

The applicant confirmed that he had been aware of the relevant rules and regulations. Whilst admitting that he had no real excuse for not reporting the convictions as requested, he felt that the current economic situation (and related pressures of running a business), meant that he felt there were mitigating circumstances. This had been an oversight, partly down to short-term memory loss due to pressure of work. He was the Financial Director of a company which employed 15 staff. He also was a part-time driver for the company. Both offences had occurred in private vehicles, and not whilst he was on company business.

Procedures had since been put into place to help ensure that such omissions would not occur again. All drivers undertook an annual assessment by an independent driving instructor. He had also voluntarily taken an advanced driving test, in February 2010, during which he had received only one minor mark against him.

He refuted actually saying that he "couldn't be bothered". He also apologised for what had been a "systematic failure on his part". He had not intended to be dishonest, and apologised to the Committee, adding that he had not intended to deceive Breckland District Council as the Licensing Authority.

The Chairman said that he found the applicant's statement to be somewhat confusing: he knew that he had made the omission, but had

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not intended to deceive. He asked the applicant to explain further.

The applicant said that he had not chosen to declare: it had been an oversight.

The Chairman clarified: the applicant had therefore known that he should have kept members of the Licensing Team aware of the situation, but he had not done so. He asked why?

The applicant said that he had an extremely busy schedule, with workload having increased because of the current recession. However he had since introduced an in-house procedure, including a hand book, to help ensure that drivers were fully aware of all the procedures required, as well as covering general safety information etc. This had been introduced in December 2009. He confirmed that this included the need to report any offences to the Licensing Authority within the proscribed number of days.

The Chairman commented that if the company were busier as a result of the recession, there was all the more reason for a Director to ensure that he conformed to Licensing Authority requirements.

A Member commented that one of the fines had been rather high (£365) and the applicant explained that he had accelerated prematurely out of Hingham (57 m.p.h. at the edge of the village).

In response to questions, the applicant said that the company employed about 20 staff, full and part-time, including a part-time bookkeeper. There were 13 vehicles, as well as a garage workshop and a car painting facility. His brother was also a Director, who managed the day-to-day running of the taxi business.

The applicant himself was essentially the Financial Director but also undertook some part-time driving, including school runs, as well as occasional driving over weekends and holidays to cover staff holidays etc.

Before the Committee retired to consider the case, the solicitor confirmed that they would be concerned with the Findings of Fact and applying the relevant Council (as Licensing Authority) policy to this case.

RESOLVED to refuse to renew the Hackney Carriage/Private Hire driver's licence for a period of six months.

The Chairman explained that, having read the report and heard the evidence presented at the Hearing, the Committee made the following findings of fact.

The Committee accepted the facts as set out in paragraphs 3.1.2 to 3.1.3 of the report.

In the circumstances, the fact that the applicant knew that the two convictions ought to have been declared, but chose to deceive the

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Licensing Authority on two occasions, indicated a degree of dishonesty which was unacceptable to the Licensing Authority.

Furthermore, it was felt that the fact that the applicant was a Director of the company compelled him to set an example to other employees.

In conclusion, the Committee considered that it had reasonable cause to refuse to renew the applicant's Hackney Carriage/Private Hire driver's licence for a period of six months.

The Chairman added that this had been a split decision, with the Committee having given serious consideration to a revocation of this licence.

On behalf of the Committee, he also asked the Licensing Officer if the team could inspect all relevant licences held by employees at the company, in order to ensure that there were no other anomalies or undeclared convictions with respect to the Council's policy as the Licensing Authority.

The Licensing Officer asked the Committee if she could have delegated authority to amend processes that formed part of the Business Transformation project in order to save both Member and Officer time. She confirmed that any changes would only be minor textual ones rather than policy amendments.

The Acting Chairman said that as this matter had not been raised as part of the formal Agenda, he would prefer the Licensing Officer to consult direct with the Chairman of the Appeals Committee. The latter might wish this matter to be formally brought to a meeting. Alternatively, he might be content with an electronic consultation, or decide to delegate authority direct to the Licensing Officer.

The meeting closed at 12.20

CHAIRMAN