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BRECKLAND COUNCIL

At a Meeting of the

APPEALS COMMITTEE

Held on Thursday, 9 September 2010 at 10.00 am in
Norfolk Rooms, The Conference Suite, Elizabeth House, Dereham

PRESENT

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

Mr R.W. Duffield
Mrs L.H. Monument

In Attendance

Sheila Cresswell
Mr Philip Mason
Ian Shaw
Rowland Wilson

- Committee Officer
- Solicitor
- Licensing Officer
- Licensing Officer

Action By

68/10 MINUTES (AGENDA ITEM 1)

Application for the Renewal of a Hackney Carriage/Private Hire Drivers
Licence (Minute No. 66/10)

It was noted that the final paragraph should read Section 51(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976, not S1(1)(a).

Minutes

Subject to this amendment, the Minutes of the meeting held on 14 July 2010 were confirmed as a correct record and signed by the Chairman.

69/10 APOLOGIES (AGENDA ITEM 2)

Apologies for absence were received from Mr M. Fanthorpe and Mr I. Sherwood.

Stephanie Butcher also sent her apologies.

70/10 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.

71/10 APPLICATION TO SUSPEND/REVOKE A HACKNEY CARRIAGE/ PRIVATE HIRE DRIVERS LICENCE

The Hearing took place in the presence of the appellant 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.

Mr Rowland Wilson, Licensing Officer (LO), presented the report, which was to consider the suspension/revocation of a Hackney Carriage/Private Hire Driver's Licence in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act, 1976.

Action By

The appellant confirmed that he had received all relevant documentation and that he agreed with what had been presented in the report.

He explained the background to the case, which had included a weekend party. The police had called round to his home later the following week in connection with a separate issue concerning ongoing anti-social behaviour by one of his neighbours. They had found the drugs in the house. The appellant said that they did not belong to him, and had presumably been left behind by one of his guests. However, he decided to claim responsibility rather than start further investigations. He had therefore received a caution and the Police Authorities had told him that they would be informing the Council of this.

The appellant had therefore just assumed that the Council would be told. However, having been contacted by the Licensing Team, he acknowledged that he should have personally notified the Council in writing within seven days of the caution, and apologised for not having done so.

He explained that he worked full time (at least 60 hours per week). He took his work very seriously and confirmed that he had a clean licence.

His employer spoke in his defence, saying that the applicant had worked for him for a year. He had been a very good and reliable driver, and had reported this incident immediately after it had happened.

RESOLVED

Having read the report and heard the evidence, and in accordance with Section 61.1(b) of the Local Government (Miscellaneous Provisions) Act 1976, the sub-Committee decided to suspend the Hackney Carriage/Private Hire Driver's Licence for a period of one week.

The appellant was aware of the substance on his premises and had failed to dispose of it after several days. In the circumstances, the sub-Committee had reasonable cause to suspend the licence as indicated.

Reason for the Decision

1. To support the Council's policy of ensuring the safety of the public; and
2. To ensure appropriate conduct of drivers licensed by Breckland District Council.

The Chairman confirmed that the appellant had a right to appeal this decision at a Magistrate's court. The suspension would not come into effect until the appeal period had expired, and the appellant would receive written confirmation of all relevant details.

**72/10 DETERMINATION OF A REVOCATION OF A HACKNEY CARRIAGE/
PRIVATE HIRE DRIVERS LICENCE**

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

Action By

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

Ian Shaw as the Licensing Officer (LO) presented the report, which was to consider the revocation of a Hackney Carriage/Private Hire Driver's Licence in accordance with Section 61 of the Local Government (Miscellaneous Provisions) Act, 1976.

The LO outlined the background and details of the case. He also handed Members some late paperwork (which the appellant confirmed he had seen). This comprised copies of a signed DVLA questionnaire, along with a letter from the DVLA confirming their acceptance of this, and that the applicant would be issued with a C1/C1E driving licence for the period of one year (i.e. to drive small lorries with trailers/weight restrictions). Also attached was the letter from the applicant registering his appeal and citing his reasons.

Members were then given the opportunity to read through this new paperwork.

There was some concern as to why the paperwork was late, and also why the appellant had originally been granted a licence (apparently against Breckland policy, given that his medical condition had been declared at the time of application).

The LO explained that unfortunately these papers had not been circulated with the Agenda as they had only been seen by him late the previous afternoon. He did not know why they had not been appended to the report.

As to the original licence approval, this was currently under investigation. The appellant confirmed that he had declared his condition on his original application. The Licensing Officer concerned was shortly due back from a lengthy period of sick leave, so further details should become available in due course.

Meanwhile, the LO drew attention to the fact that two medical declarations had been completed by different doctors on the same day.

One was the DVLA questionnaire which assessed the patient's medical fitness to drive, and which was to be completed by "a hospital consultant specialising in the treatment of diabetes, in the presence of the applicant"; whilst the other (Appendix B to the report) comprised the medical report required by Breckland Council.

There was an element of confusion as to whether the appellant had actually seen both Doctors on 11 May 2010, and, specifically, whether the DVLA questionnaire had been completed in the presence of the applicant. Also, whether the Doctor who had signed this form satisfied Breckland Council's requirement to be a "hospital consultant" specialising in the treatment of diabetes.

The appellant explained that the doctor who had signed the DVLA form was certainly a local specialist in the treatment of diabetes and was the person to whom he reported on a regular (3-4 monthly) basis. In response to questions, he said that he believed that the doctor worked as the senior partner at the surgery, rather than as a "hospital consultant".

Action By

The appellant was given the opportunity to present his case, and his employer spoke in strong defence of his “faultless seven years’ work”. He was contracted to the US Air Force based at Lakenheath. However, recent changes to the law meant that he had had to apply for a formal Hackney Carriage/Private Hire Driver’s Licence, i.e. over and above his personal driving licence.

There followed some further discussion about the documentation presented to the Committee.

Members asked for clarification and confirmation that the Group 2 Entitlement VOC – LGV/PCV for insulin-treated diabetes, which appeared in Appendix D to the report as an extract from the *DVLA Medical Fitness to Drive* document, was also formally part of the Breckland Council policy. This was important as it contained a clause which allowed the possibility of “exceptional cases”.

The Licensing Officer confirmed that that section did form part of the Council’s policy in determining whether or not someone was entitled to hold one of its licences. However, it was not clear whether the phrase “exceptional case” included PCV (passenger carrying vehicles).

Mr Mason confirmed that it was the job of the sub-Committee to be fully satisfied that each driver was a ‘fit and proper person’ as stipulated in the Council’s Licence policy and conditions, and he added that the onus on Members was not to grant a licence unless they were fully satisfied on this point.

RESOLVED

The Chairman adjourned the Hearing until the next meeting on 20 October 2010. He acknowledged that each medical practice had different methods of operation in terms of paperwork etc, but he requested a new report with clarification:

- 1) that the medical paperwork fully met the requirements as laid down by Breckland Council in respect of Hackney Carriage/Private Hire Drivers Licences; and
- 2) as to whether or not this case could be relevant for consideration as “an exceptional case” – i.e. an explicit explanation as to how the Council’s policy on this matter related to the DVLA text at Appendix D to the report covering Insulin-treated Diabetes and Group 2 entitlement.

The Chairman apologised to the applicant for the inconvenience, but said that it was important that the Committee had the full facts before them when it came to make a decision. Public safety was paramount in all such cases.

He requested that this matter be taken as the first Hearing at the next Appeals meeting, and confirmed that it would be heard in full.

73/10 NEXT MEETING (AGENDA ITEM 10)

It was noted that the next meeting would be on Wednesday, 20 October 2010.

Action By

The meeting closed at 11.25 am

CHAIRMAN