

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 7th October, 2014, 10.00 am

**Councillors:** Manda Rigby (Chair), Roger Symonds and Anthony Clarke

**Officers in attendance:** Carrie-Ann Rawlings (Senior Legal Adviser), Enfys Hughes, John Dowding (Senior Public Protection Officer) and Michael Dando (Public Protection Officer)

#### **76 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **77 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **78 DECLARATIONS OF INTEREST**

There were none.

#### **79 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **80 MINUTES - 9TH SEPTEMBER 2014**

**RESOLVED** that the minutes of the meeting on 9<sup>th</sup> September 2014 be approved as a correct record and be signed by the Chair(person).

#### **81 LICENSING PROCEDURE - COMPLAINT HEARING**

The procedure for the meeting was explained.

#### **82 EXCLUSION OF THE PUBLIC**

**RESOLVED** that, having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

#### **83 CONSIDERATION OF COMPLAINTS AND BEHAVIOUR MR C D C**

The Sub-Committee considered the report which sought determination of whether Mr CDC was suitable to continue to hold a combined hackney carriage/private hire driver's licence.

Mr CDC was not present and officers had not heard from him in respect of his attendance. The Senior Public Protection Officer stated that he had personally

delivered the report and notified Mr CDC of the meeting. He confirmed that Mr CDC had moved address several times and was now of no fixed abode. Mr CDC had attended an interview with officers and was aware his case would go before the Sub-Committee.

The Senior Legal Adviser referred Members to the procedure in circumstances where a party fails to turn up. Members considered that Mr CDC had been made aware of the meeting and appropriate procedures had been followed. They considered that having received two complaints of dangerous driving, a formal caution for assault, failure to disclose the caution and pending criminal proceedings for three alleged offences of assaulting a police officer and having attended Sub-Committee in April of this year, they should go ahead in Mr CDC's absence without delay.

The procedure for the meeting was explained.

The Public Protection Officer outlined the circumstances of the case. He explained that Mr CDC had attended the office for interview on 28<sup>th</sup> August 2014 and circulated a copy of the contemporaneous notes of this meeting. Members considered these notes in evidence.

The Senior Public Protection Officer outlined the circumstances of the incident of dangerous driving on 29<sup>th</sup> May 2014 and stated that having seen the dangerous manoeuvre he had then passed the taxi in question as traffic had slowed down and confirmed that Mr CDC was the driver.

With respect to the information from the police regarding the caution for assault and criminal proceedings for three alleged offences of assaulting a police officer, it was confirmed that Mr CDC had not notified the authority. The Senior Legal Adviser stated that Mr CDC had originally been in custody but then been given unconditional bail by the Bath Magistrates' Court until the adjourned hearing in February 2015.

The Senior Public Protection Officer stated that the police had concerns regarding Mr CDC's alcohol consumption as this had been a factor in both incidents. He was also aware from other drivers in the trade that Mr CDC had a drink problem.

Member adjourned to consider their decision.

**RESOLVED** that the combined hackney carriage/private hire driver's licence in respect of Mr CDC be revoked with immediate effect.

#### Reasons for decision

Members have had to determine whether to take any action against a licensee following two complaints of dangerous driving, a formal caution for assault and pending criminal proceedings for three alleged offences of assaulting a police officer. In doing so they have taken account of the Local Government (Miscellaneous Provisions) Act 1976, the Human Rights Act 1998, the Council's Policy and case law.

Members noted that case law stated hearsay evidence is admissible, there was no necessity for there to be a finding of guilt before an authority could conclude that there was a reasonable cause to suspend [or revoke] a licence under s61 the Act,

the economic wellbeing of the licensee is irrelevant and when considering any action the protection of the public is of the utmost importance. Accordingly Members had to decide whether the licensee continued to be a fit and proper person to hold a licence taking into account all the circumstances including his driving history and character.

Members had to make a decision about whether or not to proceed in the absence of the licensee. Having heard from John Dowding Senior Public Protection Officer that Mr CDC was notified in person by him of the Licensing Sub Committee Meeting date and provided with a copy of the report, they took the decision to proceed in his absence. Members took the view that it was in the public interest to proceed without delay and noted that Mr CDC had provided no reason for his non-attendance however the decision was kept under review.

In making a determination Members took account of the applicant's Interview under Caution on 28.08.14 and balanced this against the information provided by BANES Licensing section and the Avon and Somerset Constabulary both orally and in writing and formed the view that there was sufficient evidence to proceed in Mr CDC's absence.

Members noted that the Senior Public Protection Officer stated that in his opinion the alleged incident of dangerous driving on 29.05.14 involved an unnecessary and dangerous manoeuvre and Mr Dowding was able to identify Mr CDC as the driver.

Members noted that in 2010 the Licensing Sub-Committee had refused to renew Mr CDC's licence having taken into account cautions for forgery in 2000, intimidation of a witness in 2006 and a conviction for common assault in 2009 as well as a breach of the conditions of his licence by failing to notify BANES of the witness intimidation caution. He also had a conviction for theft dating back to 1996.

Members had regard to the fact that in April of this year Mr CDC's application for a combined Hackney Carriage/Private Hire vehicle licence was granted as Members were "satisfied that Mr [CDC] realises the value of a licence and will not do anything to jeopardise it in the future". However, Members took a dim view of Mr CDC's actions since the grant of his licence in April.

Members found that within a very short period of time since the grant of his licence he had taken part in the dangerous driving as alleged on 29<sup>th</sup> May and 2<sup>nd</sup> August, he had committed an assault for which he had received a formal caution and was pending prosecution for 3 alleged offences of assaulting a police constable. Members noted that in breach of the conditions of his licence Mr CDC had not reported the formal caution or pending criminal proceedings in the requisite time and failed to notify the BANES licensing department of a change in his address on numerous occasions.

Members formed the view that there was good evidence of an increasingly chaotic lifestyle for Mr CDC and noted that alcohol was a worrying feature of the recent incidents involving the police.

Members noted that in his Interview under Caution on 28.08.14 Mr CDC had disclosed mental health issues and problems with alcohol and alcohol related incidents. Mr CDC should be an ambassador for BANES however his behaviour had brought the taxi licensing trade into disrepute.

In the light of the reasons above Members took the view that Mr CDC was no longer a fit and proper person. The Sub-Committee Members were aware of the range of options available but took the view that warning and suspension were not proportionate. Members considered that in all the circumstances and the seriousness of the case, revocation was proportionate and given the immediate danger to public safety immediate revocation would take place.

The meeting ended at 11.28 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**