

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

### **LICENSING SUB-COMMITTEE**

Tuesday, 4th February, 2014, 10.00 am

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

**Officers in attendance:** Enfys Hughes, John Dowding (Senior Public Protection Officer) and Shaine Lewis (Principal Solicitor)

#### **97 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **98 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Councillor Gabriel Batt sent his apologies, Councillor Anthony Clarke was his substitute.

#### **99 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **101 MINUTES: 7TH JANUARY 2014**

**RESOLVED** that the minutes of the meeting held on Tuesday 7th January 2014 be confirmed as a correct record and signed by the Chair(person).

#### **102 LICENSING PROCEDURE - HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS DRIVER RENEWAL**

**RESOLVED** that the procedure for this part of the meeting be noted.

#### **103 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 by paragraphs 1, 2 and 3 of Part 1 of Schedule 12A of the Act, as amended."

#### **104 CONSIDERATION OF BEHAVIOUR AND DETERMINATION OF RENEWAL OF COMBINED HACKNEY CARRIAGE/PRIVATE DRIVER'S LICENCE: MR IH**

The Sub-Committee considered the report which sought determination of any action, in respect of Mr IWH's behaviour during an interaction with a British Transport Police

Officer and his application for renewal of his combined hackney carriage/private hire driver's licence.

The Licensee was present with Mr Hollingdale of Bath Taxi Association. He confirmed he had read and understood the procedure for the meeting.

The Senior Public Protection Officer invited the Sub-Committee, Licensee and Mr Hollingdale to view the video footage of the incident, which they did.

The Senior Public Protection Officer circulated the file notes of Mr H's previous convictions. The Licensee and Officer withdrew from the meeting for Members to have time to consider this information.

Mr H presented his case and made the following points:-

- in the last 2 years around the station had been in turmoil with the ongoing building work and the fact taxis could not go round the back of the station and customers complained about this;
- he usually did a three point turn further down the road but that day he came out of the station and indicated right to do a three point turn, the police officer told him not to do this but according to the Highway Code it was not illegal to do this in the road but you were liable if there was an accident;
- the incident had gone viral and Mr H had challenged the offence in the Magistrates Court;
- Mr H had learned from it but until a sign was put up taxis would continue to do this manoeuvre outside the station.

The Chair stated to Mr H that the Sub-Committee was not here to re-try his case but ascertain his fitness as a licensed hackney carriage/private hire driver.

Mr Hollingdale made the following points:-

- he had known the licensee for a long time and he was well-liked by his customers who often asked for him by name;
- Mr H had performed the manoeuvre to save time and money for his customer;
- since the time of the incident there had been a local meeting and taxi drivers had been told not to do this manoeuvre outside the station or further down that road;
- if the incident had not gone 'viral' it was possible that Mr H might not have had to come before the Sub-Committee;
- he added that Mr H was a veteran of Northern Ireland and the first Gulf War.

In answer to question from Councillors Mr H gave the following answers:-

- on the video it was not possible to hear him as clearly as the police officer, Mr H thought the police officer meant for him to do the manoeuvre further down the road and his customer did not want to go that way;
- in relation to why the police officer asked him to calm down, Mr H said he did not lose his cool but was just gesticulating;
- there was a sign saying do not turn right but Mr H said that it did not apply to his manoeuvre;
- there should be a no u-turn sign;
- in response to Mr H stating that the manoeuvre was not illegal, it was stated that it was dangerous especially with customers in the car, Mr H said he believed doing the manoeuvre further down the road was more dangerous;
- Mr Hollingdale added that he had told all the local taxi drivers that you could be prosecuted doing this manoeuvre outside the station;
- with regard to Mr H not doing what the police officer asked him to, Mr H stated he could not hear him clearly and thought he meant further down the road which he thought was more dangerous;
- it was noted that when Mr H last appeared before the Sub-Committee he was told Councillors took a dim view of his offences and should he appear before them in the future for any matter relating to his conduct, his licence was at risk of revocation, Mr H stated that if he had not challenged the offence in the Magistrates Court he would probably not have come before the Sub-Committee;
- Mr H stated he had not been abusive, or been convicted of fraud and had taken steps to behave;
- with the benefit of hindsight Mr H said he would not do the u-turn again;
- with regard to him not doing what the police officer asked him to, Mr H said his customer was screaming at him not to go the other way and it was hard for him to check what the officer wanted him to do.

In summing up Mr H and Mr Hollingdale made the following points:-

- Mr Hollingdale stated that after speaking to the police officer Mr H could have taken a caution not gone to court. Mr H realised now that if a police officer told you to do something you should do it, but it was hard for Mr H to hear him so it was open to debate;
- Mr H said that he was not stupid but he did not hear what the police officer said.

**RESOLVED** that the application to renew his combined hackney carriage/private hire driver's licence in respect of Mr IWH, be refused.

#### Reasons for decision

Members have had to determine whether to renew a Hackney Carriage/Private Hire Driver Licence and in so doing consider whether the licensee's behaviour fell below the required standards of a licensee as a result of his interaction with a member of the British Transport Police in the course of committing an offence of failing to comply with the direction of a constable.

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, Human Rights Act 1998 and case law. Members noted that case law stated hearsay evidence is admissible, the merits of a conviction must not be reviewed or re-opened, the economic wellbeing of the applicant 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.

With regard to the offence Members noted that the licensee was in his taxi with a passenger on board. His vehicle was indicating that it was turning right off of the train station forecourt. The licensee was approached by a Police Constable who instructed him to drive straight on along Dorchester Street. The licensee began to remonstrate with the Officer before accelerating forward, stopping and performing a U/three point turn narrowly missing a cyclist in the process. The licensee, who was now blocking the road, was again approached by the Officer who warned him that he was being filmed, should calm down and would be prosecuted if he carried on. The licensee ignored this warning and turned in the road.

Members noted that the licensee was first granted a licence in 2002 following a committee hearing which had regard to offences of criminal damage, driving with excess alcohol and a Bail Act offence. In September 2010 the licensee again appeared before Members following two convictions of assaulting a Police Constable. Whilst noting he was given credit for notifying the authority of his convictions on that occasion the minute records that he was given a clear warning that should he appear before the committee in the future his licence was at risk of revocation.

The licensee stated there had been turmoil at the train station with all the building works and he usually did a three-point turn further down the road. He stated he did not quite understand what the Officer wanted him to do as he couldn't hear him due to the traffic noise. He further stated that the only reason he was here today was because he had challenged it at the Magistrates Court, the turn was not illegal and it was safe for him to do it as he was acting according to the Highway Code. He stated it was not as if he had been abusive or committed a fraud and in any event he had changed his behaviour since he last appeared before the Committee.

Mr Holingdale stated the licensee was one of the most liked drivers in the City and had only carried out the manoeuvre to save customers time and money as other drivers did. He further stated that the licensee was an ex service man and that all drivers have now been told not to make such a turn.

Members took on board the licensee's representations and those made by Mr Hollingdale. Members however, took an extremely dim view of this conduct which, notwithstanding might not have involved the most serious of offences, was aggravated by the surrounding circumstances. Members found this behaviour demonstrated a lack of respect for authority and disregard for the safety of other road users and travelling public.

Members further considered that this conduct was such that brought the taxi trade into disrepute and flew in the face of the Council's policy and vision that its taxi drivers were expected to fulfil an ambassadorial role for the City.

Members were not satisfied that their friends, family or loved ones would be safe in a taxi driven by the licensee and therefore refuse to renew his licence for the following reasons. The licensee had been convicted of two assaults on Police Officers during the currency of his licence. Whilst this had been dealt with by a previous committee he had ignored a clear warning as to future conduct and committed a further offence. When taking his conduct, latest conviction, previous offending history and aggravating circumstance Members found he had demonstrated a propensity towards aggressive conduct which manifested itself particularly towards Police Officers and as a professional driver he has demonstrated a disregard for the safety of the travelling public and other highway users. Accordingly he was not a fit and proper person.

The meeting ended at 11.22 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**