

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 23rd January, 2020, 10.00 am

Councillors: Manda Rigby (Chair), Steve Hedges and Sally Davis (in place of Michael Evans)

Officers in attendance: Carrie-Ann Evans (Deputy Team Leader (Barrister)) and John Dowding (Senior Public Protection Officer)

63 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised the meeting of the procedure.

64 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies were received from Councillor Michael Evans, for whom Councillor Sally Davis substituted.

65 DECLARATIONS OF INTEREST

There were none.

66 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

67 MINUTES OF PREVIOUS MEETING

These were approved as a correct record and signed by the Chair.

68 EXCLUSION OF THE PUBLIC

The Sub-Committee, having been satisfied that the public interest would be better served by not disclosing relevant information, **RESOLVED** in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, that the public should be excluded from the meeting for the agenda item 8, and that the reporting of this part of the meeting should be prevented under Section 100A(5A), 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.

69 TAXI PROCEDURE

The Chair explained the procedure to be followed for the next item of business.

70 CONSIDERATION OF FIT AND PROPER - 1901260TAXI

The licensee confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report. He explained that the licensee had twice failed to comply with the condition of his licence requiring him to produce to the Licensing Section a new MOT certificate within seven working days of the expiry of the previous certificate. It was noted that on the latest occasion there had been a gap in MOT cover of seven days from the expiry of the old certificate to the issue of a new certificate. He was awarded 4 penalty points, warned that a subsequent failure would result in the matter being referred to the relevant Council Sub-Committee and asked to submit within seven days a written explanation of the gap in cover. He failed to submit a written explanation and failed to reply to two further letters asking him to submit an explanation within seven days. No letter of explanation had been received, and accordingly he had been referred to the Sub-Committee.

The licensee stated his case. He said that he had deliberately not replied to the letters because he wanted to come before the Sub-Committee to address Members directly about his dissatisfaction with the absence of a taxi rank in his area. Without a rank he had to keep driving round and round wasting fuel. He had tried to speak to Public Protection and various Council departments about this without success. The Chair advised him that this was not an appropriate forum in which to raise this matter; the Sub-Committee could only deal with the matters set out in the report.

In reply to questions from Members the licensee stated that at the time the MOT certificate had expired he had asked his driver Mr BH to attend to the matter, but the driver had gone on holiday for seven days and had not done so. The licensee further stated that when Mr BH returned from holiday, he had again directed him to attend to the matter, and he done so as soon as he had returned. The licensee again referred to his frustration at the lack of a taxi rank in his area.

The Licensing Officer explained to the Sub-Committee that following a request to Cathryn Brown regarding the provision of the existing taxi rank in his area, the Council had looked into the matter and decided that in the absence of any documentation from the former Wansdyke Council legitimising the existing taxi rank the best course of action was for B&NES to formally adopt the existing rank. This process was implemented, and a public notice was issued for consultation and in the absence of objections the taxi rank was formally appointed. As far as licensing was aware Highways had installed the required markings and signs and the licensee was aware that this process had been completed following his request. The licensee stated that Highways had done some work and that the new rank was there from September, but because B&NES had made it a clearway all B&NES were interested in was issuing parking tickets to taxis on the rank.

In his summing up the licence holder said that he had never broken any law relating to taxis. He had been a license holder for over thirty years, had a clean driving licence and had never been the subject of any complaints from the public.

Following an adjournment, the Sub-Committee **RESOLVED** that the licensee remained a fit and proper person to hold a combined Private Hire/Hackney Carriage Driver's Licence.

Decision and reasons

Members have had to consider whether or not the licensee remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence for failure to comply with a condition of his Hackney Carriage vehicle licence regarding MOT certificates and repeated failures to provide an explanation for the breach of condition. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members took account of the licensee's oral representations and balanced this against the information contained in the report before them.

The licensee told members that he was aware of the condition to provide a new MOT certificate within 7 days of the old one expiring. In this instance, the licensee explained that the MOT expired on 25th July 2019 and the driver in charge of the vehicle should have taken it in for MOT but did not as he went away on holiday. It was taken for MOT straight away when the driver in charge returned from holiday and it was MOT'd on 2nd August. The licensee explained to members that the reason he had not responded to the Senior Public Protection Officer's requests for an explanation regarding the 7-day gap between MOT certificates was that he wanted to come before the LSC to explain his concerns regarding the lack of taxi rank in his area. Members reminded the licensee that the issue before them today was whether or not he was a fit and proper person to hold a licence and separate unrelated issues should be raised with the relevant council department or his Ward Member.

Members noted that according to the conditions of his Hackney Carriage Vehicle Licence the licensee should have provided the Council with a copy of his new MOT Certificate within 7 days of expiry of the previous certificate whereas the certificate was provided nearly a month after the previous one had expired. They took account of the fact that there was a 7-day gap between the previous certificate expiring and the new one being granted. Members found the reason for the 7-day gap between MOT certificates to be plausible and noted that the vehicle was not in use during this time; they noted however, that this does not excuse the breach of condition nor his failure to comply with Public Protection's requests for an explanation for the delay. Members noted further that this was the second occasion on which the licensee had failed to produce an MOT certificate within the 7 days period prescribed by condition. Members were disappointed to note that the licensee had a history of failing to comply with reasonable requests for information by the Public Protection Team and this certainly is not the conduct that they would expect from a BANES licensed driver. That said, they balanced this against the explanation provided by the licensee, in so far as it was relevant, and his long service as a licensed driver, the fact that there were no complaints on his record from members of the public, his clean DVLA licence and clean police record.

In the light of this and based on what Members had heard and read, they consider the licensee to be a fit and proper person to continue hold a combined Hackney Carriage/Private Hire Driver's licence however, they considered a final warning to be appropriate and they had considered all options against the licensee, including revocation.

This is a final warning against the licensee that:

He should be in no doubt that he must comply with the terms and conditions of his Private Hire and Hackney Carriage licenses with BANES.

He should comply with requests of the Public Protection Team (or any successor team) in the timescales given in the administration and enforcement of his licences.

He should be civil and professional in his dealings with the Council and its representatives.

If he comes before the LSC again in relation to his future conduct, against this background, he will be at strong risk of revocation.

Note

If there is just reason why the licensee cannot respond to a request in writing, he should try to agree a way forward with the officer making the request in an agreed timeframe and this should be documented in the interests of all parties.

The licensee should not use wider grievances as an excuse for non-compliance with the terms and conditions of his licences. It is suggested that any grievances or concerns he has should be raised with the relevant council department and/or his Ward Member.

The meeting ended at 11.43 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services