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LICENSING COMMITTEE (HACKNEY CARRIAGE)

DATE: THURSDAY 11 MARCH 2010
TIME: 10.00 AM
PLACE: COUNCIL HOUSE, PLYMOUTH (NEXT TO THE CIVIC CENTRE)

Members –

Councillor Mrs Dolan, Chair
Councillor Drean, Vice Chair
Councillors Bowie, Delbridge, Mrs Nicholson, Rennie and Reynolds

Members are invited to attend the above meeting to consider the items of business overleaf

Members and Officers are requested to sign the attendance list at the meeting.

BARRY KEEL
CHIEF EXECUTIVE

LICENSING COMMITTEE (HACKNEY CARRIAGE)

PART I (PUBLIC COMMITTEE)

AGENDA

1. APOLOGIES

To receive apologies for non-attendance submitted by Committee Members.

2. DECLARATIONS OF INTEREST

Members will be asked to make any declarations of interest in respect of items on this Agenda.

3. MINUTES

(Pages 1 - 6)

To confirm the minutes of the meeting held on 11 February 2010.

4. CHAIR'S URGENT BUSINESS

To receive reports on business which, in the opinion of the Chair, should be brought forward for urgent consideration.

5. APPEAL CASES

The Committee will be provided with the results of the judgement on appeal cases that went to Court.

6. EXEMPT INFORMATION

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) 3 and 7 of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

PART II (PRIVATE COMMITTEE)

MEMBERS OF THE PUBLIC TO NOTE:

that under the law, the Committee is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

7. CONFIDENTIAL MINUTES (E3 AND E7)

(Pages 7 - 10)

To confirm the confidential minutes of the meeting held on 14 January 2010.

8. LICENSED HACKNEY CARRIAGE DRIVER REVIEW OF LICENSE STATUS MK (E3 AND E7) (Pages 11 - 18)

The Director for Community Services will submit a report on a licensed hackney carriage driver review of licence status.

PART I (PUBLIC COMMITTEE)

9. LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - C BENSON (Pages 19 - 22)

The Director for Community Services will submit a report on a licensed driver review of licence status.

LUNCH 1PM - 2PM

10. EXEMPT INFORMATION

To consider passing a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) 3 and 7 of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

PART II (PRIVATE COMMITTEE)

MEMBERS OF THE PUBLIC TO NOTE:

that under the law, the Committee is entitled to consider certain items in private. Members of the public will be asked to leave the meeting when such items are discussed.

11. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - SI (E3 AND E7) (Pages 23 - 28)

The Director for Community Services will submit a report on the application for the grant of a private hire driver's licence.

12. APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER'S LICENCE - CMF (E3 AND E7) (Pages 29 - 34)

The Director for Community Services will submit a report on the application for the grant of a private hire driver's licence.

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Licensing Committee (Hackney Carriage)

Thursday 11 February 2010

PRESENT:

Councillor Mrs Dolan, in the Chair.
Councillor Drean, Vice Chair.
Councillors Bowie, Delbridge, Mrs Nicholson and Rennie.

Apologies for absence: Councillor Reynolds

The meeting started at 10.00 am and finished at 5.50 pm.

Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.

116. DECLARATIONS OF INTEREST

There were no declarations of interest made by Members in accordance with the code of conduct.

117. MINUTES

Resolved that the minutes of the meeting held on 14 January 2010 are confirmed as a correct record.

118. CHAIR'S URGENT BUSINESS

There were no items of Chair's Urgent Business.

119. APPEAL CASES

The Committee was informed that there was a magistrate's court hearing listed on 15 March 2010 to hear an appeal against the revocation of a private hire driver's licence.

120. PRESENTATION OF TAXI ENFORCEMENT STATISTICS REPORT

The Senior Environmental Health Officer (Licensing) presented an Enforcement Activity Report for 2009. Members of the Committee were informed that –

- (i) the report, a local policy report, was the first of its kind and was prepared to give the Committee an insight into the work undertaken by the Licensing Service during 2009;
- (ii) the statistics presented in the report demonstrated that enforcement activities were an effective tool in ensuring the safety of the public, drivers and vehicles;
- (iii) Licensing Officers were keen to employ an even-handed approach to all sides of the taxi trade;
- (iv) Licensing Officers have been working closely with other agencies such as the traffic and neighbourhood police and the civil enforcement team to mitigate the effects of over ranking and nuisance.

The Committee were also informed that –

- (v) rank reviews on the Barbican and Mutley Plain would commence this year;
- (vi) it was planned to create approximately 15 extra hackney carriage rank

spaces across the city;

- (vii) a rank in the vicinity of the rear entrance to Marks and Spencer was considered in a recent review; however, as there was no material change to previous applications, which had been rejected on road safety grounds, this proposal was not pursued. Licensing Officers would endeavour to explore the need for a rank in this area with all relevant agencies including local groups in due course;
- (viii) events such as the UK Skills presentation of driver training certificates, held at the Guildhall, need to be better advertised by the organisers to assist with better attendance.

The Senior Environmental Health Officer (Licensing) was thanked for his attendance and the informative report presented.

121. LICENSED HACKNEY CARRIAGE DRIVER REVIEW OF LICENCE STATUS - D SOWDEN

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from Mr Sowden;
- (iii) taken into account Mr Sowden's –
 - explanation as to why he had not completed the VRQ training;
 - statement that he had taken steps to commence VRQ training;
- (iv) heard confirmation from the Licensing Officer of Mr Sowden's placement on a VRQ course.

Resolved that, Members find that Mr Sowden remains a fit and proper person to hold a Hackney Carriage drivers licence and that no action would be taken against Mr Sowden's licence today.

Members do, however, require Mr Sowden to confirm his completion of the level 2 VRQ in Transporting Passengers by Taxi and Private Hire or Equivalent within 12 months from the beginning of the renewal of his licence on 18 January 2010. Failure to do so may result in Mr Sowden being brought back before the committee at a future date.

122. LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - S KENDALL

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from Mr Kendall;
- (iii) heard from Mr Kendall's representative;
- (iv) heard details of faults found on Mr Kendall's vehicles on two occasions;
- (v) taken into account that –
 - Mr Kendall claimed that he now took steps to inspect his vehicle prior to each use;

- Mr Kendall's manager also stated that he inspected the vehicle prior to Mr Kendall commencing his shift;
- the vehicle probation notices imposed previously had already led to a three day loss of income in addition to a fixed penalty fine of 60 pounds and three penalty points issued by the police.

Members expressed concerns that –

- (vi) Mr Kendall was unable to give clear answers to many of their questions;
- (vii) the long hours that Mr Kendall's representative stated that he worked could contribute to the lack of time that was spent on monitoring the safe condition of his vehicle, which could impact on public safety;
- (viii) the two incidents occurred within four months of each other and took place within Mr Kendall's first year of being licensed as a taxi driver. These serious incidents demonstrate a disregard for vehicle and therefore, public safety.

Resolved that due to concerns for public safety, to suspend Mr Kendall's vehicle licence in accordance with section 18 (1) Plymouth City Council 1975 until his vehicle has undergone a full MOT and proof of the MOT has been produced to the Licensing Office.

In view of the three days that his license has already effectively been suspended, Members decided not to order any further suspension period subject to 19 (1) (b) Plymouth City Council Act 1975, however, Mr Kendall's probationary period as a taxi driver would be extended for a further 12 months.

123. **LICENSED PRIVATE HIRE DRIVER REVIEW OF LICENCE STATUS - K KAWKA**

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from Mr Kawka;
- (iii) heard details of faults found on Mr Kawka's vehicles on five occasions;
- (iv) taken into account –
 - a vehicle prohibition notice imposed previously led to a nominal loss of income as the defect was remedied that same day;
 - that the vehicle Mr Kawka was currently driving was the subject of only one of the five failed inspections listed in the report and its MOT was very imminent;
 - that the vehicle Mr Kawka was currently driving had now been repaired to the satisfaction of the Licensing Officer;
 - the latest offence was considered to be the least serious of Mr Kawka's five offences.

Members expressed concerns that –

- (v) by Mr Kawka's own admission he had accumulated six points on his licence by speeding on two occasions;
- (vi) his answers to questions put to him by members regarding these incidents

indicated a casual attitude towards speed limits and therefore, the rules of the road;

- (vii) vehicles driven by Mr Kawka had failed their inspections on five occasions between August 2007 and December 2009;
- (viii) as Mr Kawka claimed to be trained in mechanics, members felt that he should be particularly aware of possible vehicle defects and the importance of driving a safe vehicle.

Resolved not to suspend or revoke Mr Kawka's vehicle licence in accordance with section 18 (1) Plymouth City Council Act 1975. The suspension of Mr Kawka's private hire drivers license, in accordance with section (19) Plymouth City Council Act 1975, was considered but was not imposed due to his personal circumstances, however, Members had serious concerns about the apparent disregard for public safety displayed by Mr Kawka and, therefore, have decided to have recourse to the Plymouth City Council's Hackney Carriage and Private Hire Vehicle Licensing Policy which states that the Licensing Committee (Hackney Carriage) shall have the discretion to direct a driver appearing before them to complete further training or re-training should the drivers suitability to retain a license be called into question and direct that he be required to complete the Level 2 VRQ in transporting passengers by taxi or private hire or equivalent within 12 months.

This qualification is to be completed within 12 months of this decision date being 11 February 2010. Failure to complete the qualification within this period will result in Mr Kawka being brought before the committee at a future date.

124. **EXEMPT INFORMATION**

To consider passing a resolution under Section 100A (4) of the Local Government Act, 1972 to exclude the press and public from the meeting for the following item(s) of business on the grounds that it (they) involve(s) the likely disclosure of exempt information as defined in paragraph(s) 3 and 7 of Part 1 of Schedule 12A of the Act, as amended by the Freedom of Information Act 2000.

125. **LICENSED HACKNEY CARRIAGE DRIVER APPLICATION FOR EXEMPTION - RH**

The committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from RH;
- (iii) heard from RH's representative;
- (iv) considered a letter from RH's general practitioner.

Resolved that the application for a lifetime medical exemption is granted.

126. **LICENSED HACKNEY CARRIAGE DRIVER APPLICATION FOR EXEMPTION - GW**

The committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from the Licensing officer of GW's absence;
- (iii) heard details of a letter sent from GW asking for the committee to hear the application in his absence.

Resolved that GW's application for exemption will be adjourned and not considered until GW is available to attend the next available committee.

127. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER LICENCE - MT**

The committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from MT;
- (iii) considered a letter from Skills UK.

Resolved that the application for the grant of a private hire driver's licence is granted.

(Councillor Mrs Nicholson left the meeting at the conclusion of this item).

128. **APPLICATION FOR THE GRANT OF A PRIVATE HIRE DRIVER LICENCE - PB**

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from PB;
- (iii) heard details of PB's convictions.

Resolved that the application for a private hire driver's licence is granted subject to the completion of the three prerequisite tests and the level 2 VRQ in transporting passengers by taxi and private hire or equivalent within 12 months from the date of being first licenced.

(Councillor Bowie left the meeting at the conclusion of this item).

129. **LICENSED HACKNEY CARRIAGE DRIVER REVIEW OF LICENSE STATUS MK**

The Committee having –

- (i) considered the report of the Director for Community Services;
- (ii) heard from MK.

After commencing the hearing it quickly became evident that MK required legal representation in order for a fair hearing to take place.

Resolved that in the interest of natural justice to adjourn MK's hearing until the next committee date. If MK does not elect to attend with a legal representative on that date the committee hearing will take place in any event.

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By virtue of paragraph(s) 3, 7 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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CITY OF PLYMOUTH

Subject: Licensed Driver – Review of Licence Status
Committee Licensing Committee (Hackney Carriage)
Date: 11 March 2010
Cabinet Member: Councillor Brookshaw
CMT Member: Director for Community Services
Author: George Curness – Assistant Licensing Officer.
Contact: 01752 307964 e-mail: george.curness@plymouth.gov.uk
Ref: PPS/LIC/GC/chb
Part: I

Executive Summary:

Mr Colin Howard Benson is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on 1 February 2008. Mr Benson's present licence is due to expire on 11 February 2011.

On 12 February 2010, Mr Benson attended the Licensing Desk to renew his Private Hire driver's licence. An examination of the DVLA revealed a motoring conviction which had not been previously notified to the Licensing Office.

Mr Benson has been invited to attend this hearing.

Corporate Plan 2010 - 2013:

This report links to the delivery of the corporate priorities defined in the Corporate Improvement Plan. In particular:

Improving Accessibility (Transport)

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

Not applicable.

Other Implications: eg. Section 17 of the Crime Disorder Act 1998 - Community Safety, Health and Safety and Risk Management, Equality Impact Assessment etc.

Members should be aware that Section 17 of the Crime Disorder Act 1998 put a statutory duty on every Local Authority to exercise its various functions with due regard to the need to do all that it reasonably can do to prevent crime and disorder in its area.

Recommendations and Reasons for recommended action:

That Members of the Licensing Committee consider this report.

Alternative options considered and reasons for recommended action

None.

Background papers:

(Insert)

Sign off:

Head of Fin		Head of Leg		Head of HR		Head of AM		Head of IT		Head of Strat. Procur.	
Originating CMF Member											

Report

1. Mr Colin Howard Benson is a licensed Private Hire driver, having been first granted a Private Hire driver's licence by this Council on 1 February 2008, following a Licensing Committee decision to grant the licence at a hearing on 24 January 2008. Mr Benson's present licence is due to expire on 11 February 2011.
2. On 12 February 2010, Mr Benson attended the Licensing Desk to renew his Private Hire driver's licence. An examination of the DVLA revealed a motoring conviction which had not been previously notified to the Licensing Office.
3. The DVLA licence reveals that on 2 February 2009 Mr Benson was convicted of exceeding the statutory speed limit on a public road, the offence was committed on 18 July 2008. He was fined £100 and his licence was endorsed with 3 penalty points. Prior to this Mr Benson was given a fixed penalty fine and his DVLA licence endorsed with 3 penalty points for exceeding the statutory speed limit on a public road on 1 January 2009.
Mr Benson therefore has 6 penalty points on his DVLA, all accrued during his first year of being licensed.
4. At the time of this conviction Mr. Benson was licensed as a Private Hire driver and, as such was governed by the conditions of licence for such drivers, which are made by virtue of Section 9(2) of the Plymouth City Council Act 1975.

Condition 1 of the licence states:

The licence holder shall notify the Council's Hackney Carriage and Private Hire Inspector IN WRITING of any alteration to his declared circumstances within 7 days of such change.

Condition 1(c) states:-

Conviction in a Court of Law in respect of any Motoring or Criminal offences following the grant of a licence.

And condition 1(e) states:

The licence holder shall further inform the Council of any motoring fixed penalty endorsements received, in writing within 7 days of receiving the endorsement.'

There is no record of Mr Benson reporting these matters to the Licensing Office, and he has therefore, breached his PHD conditions of licence.

5. The actions open to Members are those contained in Section 19(1) (b) of the Plymouth City Council Act 1975 which empowers the Council to suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle,

for :- ***“any other reasonable cause”.***

6. In deciding whether Mr Benson is fit and proper, Members must have regard to the Council's Hackney Carriage and Private Hire licensing policy. The relevant parts of which are detailed below:

- General Policy

The Council's Hackney Carriage and Private Hire licensing policy states that the Council will carry out its Hackney Carriage and Private Hire licensing function with a view to promoting stated objectives. Members must therefore ensure that they consider those objectives when forming a decision.

The Licensing objectives are as follows:

1. Safety and health of drivers and the public. e.g.
 - Consideration of history of convictions and cautions
 - Driver training, qualification and performance
 - Health and Fitness to fulfil the role
 - Crime prevention measures
2. Vehicle safety, comfort and access
3. To prevent crime and disorder and to protect consumers. e.g.
 - Commitment to work with the police and licensing authorities
4. To encourage environmental sustainability

Chapter 2, paragraph 19.3 is phrased so that generally, receiving two fixed penalty during a licence period will mean the driver receives a warning letter.

Chapter 4, paragraph 8.1 states that the committee may revoke any licence it issues where it is satisfied that a licence holder is no longer fit and proper or a breach of a condition of licence has been established. Paragraph 8.2 goes on to say that when considering the revocation of any licence, the committee will take into account all relevant facts and circumstances including the licensing objectives, the nature of the breach and any other information thought pertinent to the matter being considered.

Chapter 4 paragraph 10.2 states that the committee have the discretion to direct a driver appearing before them to complete further training or retraining, should the driver's suitability to retain a licence be called into question.'

Paragraph 8 of Appendix A of the policy states that any existing driver who receives a relevant conviction within the licence period will be referred to the Licensing Committee (Hackney Carriage) in order that the status of their licence can be reviewed.

A Motoring Offence is a relevant offence under Paragraph 2 of Appendix A

- Overriding Objective

The Policy confirms that each case will be determined on its merits

7. The Policy states that any application may be referred to the Licensing Committee (Hackney Carriage) at the discretion of the Licensing Officer. The Policy also states that it shall have reference to applicants and existing licence holders on or after the effective date, the effective date being 1 November 2008.
8. Members are asked to consider whether Mr Benson remains a fit and proper person to retain his licence in light of the conviction, endorsements and breach of licence conditions.
9. Mr Benson has been invited to attend this Licensing Committee in order that this matter may be considered.

By virtue of paragraph(s) 3, 7 of Part 1 of Schedule 12A
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