

CITY OF PLYMOUTH

Subject: Licensed Driver – Review of Driver Licence Status
Committee Licensing Committee (Hackney Carriage)
Date: 30 September 2010
Cabinet Member: Councillor Peter Brookshaw
CMT Member: Director for Community Services
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Ref: ERS/LIC/MS/kwe
Part: I

Executive Summary:

Mr Kenneth Wilfred Elliott is a Private Hire driver having been first licensed by this Council on the 10th September 2008. On the 8th September 2009, Mr Elliot transferred to a Hackney Carriage driver licence, and that licence was renewed on the 6th September 2010 and is due to expire on the 7th September 2011.

At the last renewal of licence Mr Elliott produced his DVLA driver licence for examination, and it was noted by the Licensing Support Officer that the licence contained several endorsements which had not been reported to the Licensing Section.

Corporate Plan 2010-2013:

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

Improving access across the City.

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:

None

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 Kenneth Wilfred Elliott is a Private Hire driver having been first licensed by this Council on the 10th September 2008. On the 8th September 2009, Mr Elliott transferred to a Hackney Carriage driver licence, and that licence was renewed on the 6th September 2010 and is due to expire on the 7th September 2011.
2. On the 6th September 2010 Mr Elliott attended the Licensing Counter of the Civic Centre to renew his Hackney Carriage driver licence which was due to expire on the 7th September 2010. During this transaction, the Licensing Support Officer noted that Mr Elliott had multiple endorsements on his DVLA counterpart and had accumulated a total of 12 penalty points on that licence.
3. On examining the file for Mr Elliott, Taxi Enforcement Officers noted that some of the endorsements had not been notified to the Licensing section, and attempts (which are provided in paragraph 5) had previously been made to require Mr Elliott to produce his DVLA counterpart for examination, which had not been complied with. On the 7th September 2010 enquiries were made with Plymouth Magistrates Court regarding the status of the driving licence status of Mr Elliott, and a memorandum of conviction was received which provided the information below. This information has been taken from both the memorandum and his DVLA driving licence to build a chronology of his convictions.

On 12th June 2009 at Plymouth Magistrates' Court.

Convicted of Exceeding the Statutory Speed Limit on a Public Road, namely Plymouth Rd, on 20th September 2008 in a motor car registered number DG04YNV, contrary to Section 81(1) and 89(1) of the Road Traffic Regulation Act 1984 and Schedule 2 of the Road Traffic Offenders Act 1988.

Fined £60. ordered to pay £15 victim surcharge and driving licence endorsed with 3 penalty points.

On 9th February 2010 at Plymouth Magistrates' Court.

Convicted of Using a Motor Vehicle with Tyre with any of the Ply/Cord Exposed. On the 1st October 2009 on a Taxi Rank in Barbican Leisure Park used a Taxi registered number S964OVP when the front offside wheel was fitted with a tyre which had ply or cord exposed, contrary to Regulation 27(1)(e) of the Road Vehicles (Construction and Use) Regulations 1986, S.41A of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic offenders Act 1988.

The case was proved in his absence and he was fined £230 and ordered to pay £60 costs and £15 victim surcharge with his driving licence being endorsed with 3 penalty points.

Convicted of Failing to Produce Driving Licence on the 1st October 2009, being a person driving a motor vehicle, namely a Taxi registered number S964OVP on a taxi rank at Barbican Leisure Park, on being so required by a Constable, failed to produce for examination his licence contrary to S.164(6) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

The case was proved in his absence and he was fined £175.

On 25th May 2010 at Plymouth Magistrates Court

Convicted of Exceeding the Statutory Speed Limit on a Public Road on the 28th November 2009.

Fined £100 with his driving licence endorsed with 3 penalty points.

On 6th July 2010 at Plymouth Magistrates' Court.

Convicted of Using a handheld mobile phone / device while driving a motor vehicle, registered number X736JNS, on a road, namely The Octagon Roundabout, Plymouth, contrary to Regulation 110(1) of the Road Vehicles (Construction and Use) Regulations 1986, S.41D of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

Fined £80 and ordered to pay costs of £45 and a victim surcharge of £15 with his driving licence endorsed with 3 penalty points. There was no disqualification due to mitigating circumstances as disqualification would lead inevitably to loss of employment as a taxi driver and in defendant's circumstances, exceptional hardship.

It should be noted by Members that the vehicles mentioned above were all at the time of these offences either licensed Hackney Carriages or Private Hire vehicles.

At the time of writing this report Mr Elliott has a total of 12 live penalty points endorsed on his DVLA driving licence.

4. By way of additional information, members are advised that Mr Elliott has previously had points on his licence in respect of speeding offences, and one conviction for driving without due care and attention. None of these points are still live. This information was considered by Members at the time of Mr Elliott's application for a licence and is included in brief should Members consider it relevant to demonstrating a history of offending.
5. From examining the file of Mr Elliott, it would appear that there have been repeated attempts to get him to produce his DVLA licence for examination since his renewal of licence on the 8th September 2009. A chronology of those events is provided here for Members information.

8th September 2009 – Hackney Carriage driver licence granted (in exchange for his Private Hire driver licence) at that time he failed to produce his DVLA driving licence counterpart, but paid for the Council to obtain driving licence information from the DVLA. He was also informed that he needed to produce his DVLA for examination.

15th October 2009 – Taxi Enforcement Officer made telephone contact with Mr Elliott to remind him that he was required to produce his DVLA counterpart, which had still not been done since the request was made on the 8th September 2009.

4th December 2009 – Further telephone call made to Mr Elliott by a Taxi Enforcement Officer, with a message left for him to contact the Licensing Section regarding the non production of his DVLA licence.

21st December 2009 – Letter sent to Mr Elliott again requiring his DVLA licence counterpart. This letter is reproduced as appendix A.

9th March 2010 – A second letter sent to Mr Elliott requiring him to produce his DVLA licence counterpart. This letter is reproduced as appendix B.

17th March 2010 – Mr Elliott produced his DVLA counterpart for examination and stated verbally that a further three points were due to be added to that licence.

The above taken with the fact that he had not declared any of the convictions he has received during his period of being licensed, raises concerns over the willingness of Mr Elliott to supply information when it is requested of him, and the standard of his driving skills which must be called into question given his history of offending.

6. 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”.

7. In deciding whether Mr Elliott is a “fit and proper” person, 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 Councils 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 actions,
 - Driver training, qualification and performance,
 - Health and fitness to fulfill the role, and
 - 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. – Conditions of Licence

Paragraph 12.3 states that when considering whether someone is fit and proper the authority will consider amongst other things

- Relevant skills
- Knowledge
- Experience
- Qualifications
- Criminal record (as to relevance of offences see below)
- Previous history as a licence holder

Paragraph 18.2 requires that in considering whether a person is fit and proper each case is considered on its own merits.

Paragraph 18.5 requires the Committee to have regard to the following when considering previous convictions:

- Whether they are spent or unspent.
- The nature of the offence
- The age of the offence
- The apparent seriousness as gauged by the penalty
- The relevance of the convictions in relation to the promotion of the Licensing Objectives

Chapter 4 – Enforcement Policy

Paragraph 8.1 - Allows the Council to revoke any licence where it is satisfied that the licence holder is, for example, no longer a 'fit and proper' person.

Paragraph 8.2 - Requires that when considering revocation, the Committee will take into account all relevant facts and circumstances including licensing objectives, the nature of the breach and any other information thought pertinent to the matter being considered.

Paragraph 10.2 - Gives the Committee the discretion to direct a driver appearing them to complete further training or re training should the driver's suitability to retain a licence be called into question.

Guidance on the Relevance of Convictions

Paragraph 1 – states that the disclosure of a criminal record will not automatically prevent any applicant from obtaining a licence unless the Council considers the applicant unsuitable. In making its decision the Council will consider the relevance of any offence, the seriousness of the offence, the length of time since the offence occurred and any pattern of offending behaviour.

Paragraph 2 - states that motoring offences are relevant offences for considering the suitability of a person to retain a licence.

Paragraph 8 – states that any driver who receives a conviction within their licence period will be referred to the Licensing Committee (Hackney Carriage) in order that the status of their licence may be reviewed. The above guidance will be followed in such cases.

8. Members are asked to consider whether Mr Elliott is a "fit and proper" person in light of the matters contained within this report, and in particular his antecedence of driving convictions some of which directly relate to the use of vehicles licensed by Plymouth City Council.
9. Mr Elliott has been invited to attend this Licensing Committee in order that this review may be considered.