

REGULATORY COMMITTEE

Minutes of the meeting held on Wednesday 24 June 2009 at Town Hall, Royal Leamington Spa at 2.00pm.

PRESENT: Councillors Crowther, Mrs Falp, Mrs Goode, Illingworth, Mrs Knight and Mrs Mellor.

Apologies for absence were received from Councillors Mrs Grainger and Harris.

The Emergency Procedure was read out by the Committee Services Officer.

1. APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

RESOLVED that Councillor Mrs Mellor be appointed Chairman and Councillor Mrs Falp be appointed Vice-Chairman for the ensuing year.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES

The minutes of the meeting held on 6 May 2009 were confirmed as a correct record and signed by the Chairman.

4. PUBLIC AND PRESS

RESOLVED that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following two items by reason of the likely disclosure of exempt information within paragraph 1 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006.

5. LICENSED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER WITH UNDECLARED CONVICTION

The Committee considered a report from Community Protection on a licensed hackney carriage/private hire driver with an undeclared conviction, and the Committee were asked to consider whether HS was a fit and proper person to continue to hold hackney carriage/private hire driver licence.

HS renewed his hackney carriage/private hire driver's licence in March 2008 and March 2009 and on both occasions, he only declared his conviction for a breach of HMO Housing Act.

REGULATORY COMMITTEE MINUTES (Continued)

HS appeared before the Council's Regulatory Committee on 26th February 2008 with regard to the conviction where a warning regarding his future conduct was issued.

HS's three yearly Criminal Records Bureau (CRB) disclosure was received in April 2009 showing a caution by Warwickshire Police for battery on the 9th July 2007. This pre-dates both HS's renewal applications mentioned earlier.

Officers interviewed HS regarding the non-disclosure on 30th April 2009. He said that he had just forgotten about it when he made his renewals.

HS did not attend the meeting as his solicitor was not available, therefore the report was deferred to the next meeting.

RESOLVED that

- (1) the report be deferred to the next meeting; and
- (2) the Licensing Services Manager writes to HS stating the Committee's concerns regarding his non-attendance at the meeting and if he does not attend the next meeting, the report will be heard in his absence.

6. APPLICATION FOR A HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE FROM A PERSON WITH CONVICTIONS

The Committee considered a report from Community Protection regarding an application for a hackney carriage/private hire driver's licence from a person with convictions, and the Committee were asked to consider whether AQ, was a fit and proper to be granted a hackney carriage/private hire licence.

AQ applied for a hackney carriage/private hire driver's licence in February 2009. He declared cautions for drug offences on his application form.

When officers received AQ's Criminal Records Bureau (CRB) disclosure in May 2009, two cautions for drug offences were revealed with the later one being given in March 2009.

AQ had declared on his application form that he had held a licence with Birmingham City Council. A telephone call to that office by officers had revealed that he applied in 2004 for a licence, but that it had been rejected.

A copy of AQ's CRB disclosure was circulated at the meeting. The Licensing Services Manager also circulated to the Committee, a copy of AQ's driving licence which showed further endorsements which he had not declared.

AQ attended the meeting and answered questions from the Committee.

AQ and the Licensing Services Manager left the room whilst the Committee deliberated in private. They were then asked to return to hear the decision of the Committee.

REGULATORY COMMITTEE MINUTES (Continued)

The Committee had to make its decision based on the information contained within the officer's report and the information presented before it at the meeting.

The information regarding AQ's previous drug related cautions which were declared on the application form for a hackney carriage/private hire drivers licence, and stated on the CRB check, were of concern to Committee.

The Committee also had concerns that AQ did not declare all his cautions for driving offences on his application form.

Having heard from AQ the Committee was not convinced by his explanation as to why the drugs were found in his vehicle and why he had not declared his cautions for the driving offences.

Therefore the Committee was not satisfied that he was a fit and proper person to apply for a hackney carriage/private hire drivers licence and the application was refused.

AQ was advised that he had 21 days from notification of decision to appeal to magistrates' court.

RESOLVED that the application from AQ for a hackney carriage/private hire driver's licence be refused.

(At the conclusion of this item the public and press were no longer excluded)

7. REQUEST TO LICENCE A MITSUBISHI LANCER EVOLUTION FOR PRIVATE HIRE WORK

The Committee considered a report from Community Protection on a request to licence a Mitsubishi Lancer Evolution (MLE) as a suitable vehicle for private hire work.

Mr Dilruba Ramzan had approached the Licensing Services Manager to ask if he had any concerns as to whether an MLE should be licensed by Warwick District Council (WDC).

The Licensing Services Manager did not consider the vehicle suitable, but advised Mr Ramzan that this decision could be appealed to the Council's Regulatory Committee.

The Council's Licensing Policy permits the following type of vehicle to be licensed for private hire purposes:

"Private hire vehicles must be of the four-door saloon, five door estate type, or mini people carrier and must be capable of carrying not less than four nor more than 8 passengers and their luggage. (If they carry more than eight passengers they will need to be licensed as a PCV). There must be a driver's door, a front passenger door and two other doors. Vehicles with rear opening passenger entrance doors for disabled passengers will not be permitted."

REGULATORY COMMITTEE MINUTES (Continued)

However, as this was a Policy, not a definitive rule, it did not preclude each application to be examined on its own merits.

An update on the details of the vehicle were circulated at the meeting.

Mr Ramzan attended the meeting and answered questions from the Committee.

Mr Ramzan and the Licensing Services Manager left the room whilst the Committee deliberated in private. They were then asked to return to hear the decision of the Committee.

The Committee were of the opinion that the Mitsubishi Lancer Evolution was a suitable vehicle to be licensed as a private hire vehicle, and it should be licensed accordingly.

RESOLVED that the Mitsubishi Lancer Evolution be approved to operate as a private hire vehicle.

8. OBJECTIONS TO AN APPLICATION FOR STREET TRADING CONSENT

The Committee considered a report from Community Protection regarding objections to an application for a Street Trading Consent, for a burger van positioned in a lay-by on the A46 near Kenilworth.

Makorzata Swietlik applied for a street trading consent in March 2009.

At a meeting of the Regulatory Committee on 6th May 2009, Members adjourned the case and asked for more information regarding the recommendations of the Police and Highways Authority regarding the parking in the lay-by and any perceived legal irregularities or safety issues present. The previous report presented to the Committee was shown as appendix 2, to the report.

Officers had spoken to Phil Moore, Road Safety Officer, Warwickshire Police Road Safety Unit who confirmed that it was the Forces' policy to try and encourage drivers to take a break when feeling tired. He confirmed that the Highways Authority neither condoned nor were against burger vans being placed in lay-bys.

Officers explained to Phil Moore that, should the burger van create traffic problems, either he or his officers could report the problem to the Council who had the power to revoke the consent in such circumstances.

Mr Sweitlik attended the meeting and answered questions from the Committee.

Mr Sweitlik and the Licensing Services Manager left the room whilst the Committee deliberated in private. They were then asked to return to hear the decision of the Committee.

REGULATORY COMMITTEE MINUTES (Continued)

The Committee were of the opinion that the street trading consent should be granted.

RESOLVED that street trading consent be granted.

9. PUBLIC AND PRESS

RESOLVED that under Section 100A of the Local Government Act 1972 that the public and press be excluded from the meeting for the following item by reason of the likely disclosure of exempt information within paragraph 1 of Schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006.

10. LICENSED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER NOT TAKING DISABILITY AWARENESS AND OTHER MATTERS

The Committee considered a report from Community Protection regarding the behavior of an existing licensed hackney carriage/private hire driver, and considered whether WAF was still a fit and proper person to continue to hold a licence.

Drivers licensed by Warwick District Council to drive hackney carriage and private hire vehicles were required to take the nominated disability awareness course run by the Guide Dogs for the Blind in Leamington Spa.

WAF had been invited to attend several courses but had not so far done so. Officers wrote to WAF on 1st May 2009 asking for an explanation as to why he hadn't attended.

A letter had been received from WAF on 8th May 2009 outlining his reasons for not attending and confirming that he would attend on 10th June 2009. Confirmation had been received by officers from the course organisers that WAF did not attend.

WAF had also been spoken to by officers, as well as the Police, regarding his standard of driving, an alleged theft of petrol and also faults found with his vehicle.

WAF attended the meeting and answered questions from the Committee.

WAF and the Licensing Services Manager left the room whilst the Committee deliberated in private. They were then asked to return to hear the decision of the Committee.

The Committee has made its decision based on the information contained within the officer's report and the information presented before it today, including the oral representations of WAF.

REGULATORY COMMITTEE MINUTES (Continued)

The Committee had serious concerns about the standard of WAF's driving. The Council's policy stated that a record of "consistently good and safe driving" would be considered when deciding whether a person was "fit and proper". WAF had been seen by officers and the police driving erratically on three occasions, and this was not considered acceptable. It was also noted by the Committee that there were faults with the vehicle that Mr WAF was driving.

WAF failure to attend the Disability Awareness Course on two occasions is also of concern to the Committee. WAF explanation of the failure to pay for petrol indicated, at best, a lack of responsibility on his part.

Having considered WAF's erratic driving, his failure to attend the Disability Awareness Course, and his failure to pay for petrol and report a recent accident, it was felt that he cannot be considered a fit and proper person to hold a hackney carriage/private hire licence and therefore the Committee had no option but to revoke his licence.

WAF was advised that he had 21 days from notification of decision to appeal to magistrates' court.

RESOLVED that WAF's licence be revoked.

(At the conclusion of this item the public and press were no longer excluded)

11. COUNCIL'S POLICY ON THE AGE OF VEHICLES

The Committee considered a report from Community Protection on suggested changes to the Council's Policy on the Age of Vehicles.

At present, under the Council's Policy new private hire licences were no longer issued to vehicles over 5 years old unless the vehicle was in exceptional condition. The exceptional condition clause was added as it was considered that a challenge might be mounted in its absence. However, it was now causing officers considerable problems when a decision on the vehicle's condition was required if it was older than 5 years.

A Crown Court case (*R v Hyndburn Borough Council, ex p Rauf and Kasim*) had now established that it was not unreasonable for Council's to adopt an age limit without an exceptional condition clause, as long as the policy reflected this.

At present, the Council's Policy showed that the maximum age that private hire and hackney carriages were able to be continually licensed was 8 years (London cab vehicles are 10 years). Vehicles that were between 5 and 8 years old had to submit to two MOT/inspections every year.

Officers had been approached by owners of purpose built hackney carriages wishing for this age limit to be raised, especially in light of the current economic climate and the cost of replacement of this type of vehicle.

Officers suggest the current policy regarding hackney carriage non-purpose built vehicles and private hire vehicles should remain a maximum age limit of 8

REGULATORY COMMITTEE MINUTES (Continued)

years as, by this time, they were generally not suitable to be re-licensed and their replacement cost was not excessive.

RESOLVED that

- (1) the maximum age for private hire vehicles, upon first licensing, remain at 5 years old and the exceptional condition clause be removed; and
- (2) the age limit for purpose built hackney carriage vehicles (including London Cabs) be 12 years old.

(The meeting ended at 4.45pm)