



LICENSING COMMITTEE - LICENSING HEARING
(SUB-GROUP B)
01 September 2014 at 10.30 am
Council Chamber, Argyle Road, Sevenoaks

AGENDA

Membership:

Cllrs. Mrs. Parkin, Pett and Raikes

(Composition: Each Sub-Committee will contain three Members of the Licensing Committee. Any member of the Licensing Committee may act as a substitute on any of the Licensing Sub-Committees.)

IMPORTANT INFORMATION

If an interested party (e.g. a parish or town council) has not made a "relevant representation" (section 18(6) and (7) of the Licensing Act 2003), it will not receive a notice of the hearing (Reg. 6(1) Hearings Regulations). The interested party will not, therefore be "a party to the hearing" (Reg. 2 Hearings Regulations). There will therefore be no right to address the hearing (Reg. 16 Hearings Regulations).

The above also applies to a Member i.e. if s/he does not make a "relevant representation" s/he will not be a "party to the hearing" and has no right to address the hearing unless appointed by "a party to the hearing" to assist or represent that party.

Would you please note that all the reports/information listed on this agenda are available from the Democratic Services Team on request (01732 227241). Alternatively you can make an appointment to view the information at the District Council Offices by contacting the Licensing Partnership Manager on 01732 227325.

- 1. Appointment of Chairman**
- 2. Declarations of interest**
- 3. Review of Hackney Carriage Driver's Licence (Pages 1 - 8)**

1. Procedure at Sub-Committees of the Licensing Committee (established in accordance with Section 9 of the Licensing Act 2003)

- 1.1 In accordance with Section 9(1) of the Licensing Act 2003, the Licensing Committee has resolved to establish Sub-Committees, each consisting of three members of the Committee.
- 1.2 The Sub-Committees have delegated authority to determine those functions that are reserved for decision by the Sub-Committees in accordance with Appendix B of the Council's Statement of Licensing Policy dated 7 January 2011.
- 1.3 Hearings shall be conducted in accordance with this Procedure Note and The Licensing Act 2003 (Hearings) Regulations 2005 subject to the right of the Sub-Committee to vary that procedure at their absolute discretion if considered in the public interest.
- 1.4 The quorum for a Sub-Committee shall be two members.
- 1.5 At the commencement of each hearing the Sub-Committee shall elect one of its members as Chairman.
- 1.6 The order of business at hearings shall be:
 - (a) Election of Chairman.
 - (b) Declarations of interests.
 - (c) Chairman explains the procedure to be followed at the hearing, including the setting of equal time limits for all parties and the granting of adjournments.
 - (d) Chairman ascertains who is assisting or representing the parties.
 - (e) Applicant (or his/her representative) addresses the Sub-Committee.
 - (f) Applicant questioned by members. At the discretion of the Sub-Committee other parties may be permitted to question the applicant.
 - (g) Persons who have made representations in respect of the application (or their representative) address the Sub-Committee. No issues other than those relevant to their representations may be raised.
 - (h) Members question each party at the conclusion of their address. At the discretion of the Sub-Committee, the applicant may be permitted to question other parties.
 - (i) Sub-Committee may offer the parties a short adjournment to discuss in the absence of the Sub-Committee whether a solution acceptable to all the parties can be put to the Sub-Committee.
 - (j) Applicant (or his/her representative) makes closing address.

- (k) Sub-Committee may grant a short adjournment. The parties may not speak to members regarding the application during adjournments.
- (l) The Sub-Committee considers the application and motions put to accept or reject the application in the terms requested or to grant the application subject to specified conditions. Reasons are to be given for motions.
- (m) The parties will be informed of the decision at the hearing or thereafter in accordance with Regulation 26 of the 2005 Regulation.

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REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

Licensing Sub Committee

Report of Chief Officer Environmental & Operational Services – Mr Richard Wilson

Status: For Decision

Key Decision: No

Contact Officer(s) Leeann Leeds Ext: 7270

Recommendation to Licensing Sub Committee:

To consider the evidence presented to the Sub Committee and if Members find that it is more likely than not that the complaint was well founded to consider suspending Mr Van Sertima's Hackney carriage drivers licence for a period of three months and requiring Mr Van Sertima to re-take the Driving Standards Agency practical test.

Reason for recommendation: To deal with a complaint made to the Council about Mr Van Sertima's driving.

The purpose of this report is to give Members the opportunity to deal with a complaint made by Lindsey James regarding Mr Van Sertima's driving on 24 April 2014. Members should give consideration to section 61 of the Local Government (Miscellaneous Provisions) Act 1976 which includes dealing with offences such as dishonesty, indecency or violence or any other reasonable cause. The powers contained within this section are to protect the public.

Background

1. Mr Van Sertima has been licensed as a Hackney Carriage driver since 2 April 2008. He works as a HC driver full time has a clean DVLA driving licence and has not been the subject of any disciplinary proceedings in relation to his Hackney Carriage drivers Licence.

'Fit and Proper'

2. The definition of what is a fit and proper person is not set in law however the generally accepted test is:

Would you allow your son daughter, mother, spouse or other person you care about get into this vehicle with this person alone?

This rule was confirmed in discussion by Silber J. in the case of Leeds City Council v Hussain which surrounds the suspension of a driver:

Agenda Item 3

... 'the purpose of the power of suspension is to protect the users of licensed vehicles and those who are driven by them and members of the public. Its purpose is to prevent licences being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault people'.

3. The 'fit and proper' test is applied and achieved by the applicant attending an interview, references being taken up and return of a satisfactory DBS enhanced disclosure. The licensing authority will not licence an individual until that individual can prove the Licensing Officer that they are a 'fit and proper' person to hold such a licence.

Complaint

4. On 2 May 2014 the Licensing Authority received a complaint from a member of the public. See Appendix A.

Police response

5. On the 2 June 2014 the Licensing Authority received an email from Angela Dench – Senciro Prosecution Officer from Strategic Criminal Justice department.

Extract from the information via email received by Sevenoaks District Council's Licensing Authority:

I am currently reviewing an allegation of bad driving from a taxi driver in Swanley. The incident occurred in the Asda car park, and involved a lady and her three young children. The driver of the taxi had begun to drive away when the youngest child (aged 4) was not quite in the car and she was dragged along for a metre or so. There were no injuries. Unfortunately due to an investigative error at my end, the driver is unable to be prosecuted.

Licensing Officer's investigation

6. Mr Van Sertima was informed of the complaint on the 22 May 2014 and was invited to make a witness statement.
7. CCTV footage from Asda was received on 2 June 2014 and has been viewed by the Licensing Officer and will be shown to the Sub Committee.
8. Mr Van Sertima was shown the CCTV footage on 31 July 2014 and invited to amend his original which he did. See Appendix B.
9. Mr Van Sertima was notified by letter, dated 13 August 2014 that he would be required to attend a hearing in front of the Licensing Committee who would hear his case.

Legal Framework

10. The legislation relating to the suspension/revocation of drivers licence is contained in section 61 Local Government (Miscellaneous Provisions) Act 1976.

(1) Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds:—

(a) that he has since the grant of the licence—

(i) been convicted of an offence involving dishonesty, indecency or violence ; or

(ii) been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act; or

(b) any other reasonable cause.

11. Where a licence is suspended or revoked, the sanction will not take effect for 21 days however in relation to Drivers' licences, and in accordance with section 61 (2B) "If it appears that the interests of public safety require the suspension or revocation of the licence to have immediate effect, and the notice given to the driver under sub section 2 (a) of this section includes a statement that that is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver".

Key Implications

Financial

12. Members are reminded that a Hackney Carriage Driver Licence should not be suspended or revoked without appropriate evidence that shows on the balance of probability that such action is required, suspension or revocation can have serious financial consequences for the holder of the licence. Sevenoaks District Council could incur costs, should Mr Van Sertima appeal the decision made by Members to the Magistrates Courts.

Legal Implications and Risk Assessment Statement.

13. Decisions in relation to a licence amount to consideration of civil rights and obligations with the result that Article 6(1) of the Human Rights Act 1998 is engaged. The Council therefore has to ensure that there is a fair hearing normally heard in public. It should be noted that there is a statutory right of appeal to an independent tribunal and Mr Van Sertima has the right to appeal the decision made by the Council to the Magistrates court if he is aggrieved by the decision.

Appendices

Appendix A – Complaint from Lindsey James

Appendix B – Mr Van Sertima's amended statement

Agenda Item 3

Background Papers:

Local government (Miscellaneous Provisions) Act 1976.

<http://www.legislation.gov.uk/ukpga/1976/57>

Sevenoaks District Council's Hackney Carriage and Private Hire Policy

Town and Police Clauses Act 1847

<http://www.legislation.gov.uk/ukpga/Vict/10-11/89>

Richard Wilson

Chief Officer Environmental & Operational Services

Leeann Leeds

From: Licensing
Sent: 02 May 2014 13:13
To: Claire Perry; Leeann Leeds; Jessica Bolton
Subject: FW: Taxi H21

From: Linzi [REDACTED]
Sent: 02 May 2014 12:42
To: Licensing
Subject: Taxi H21

I would like to make a formal complaint against the above mentioned driver.

At approximately 5pm on Thursday 24th April i approached a cab at the taxi rank at Asda, Swanley. The driver informed me that he could bring me home but he would have to take me the long way due to traffic and that it would cost more. I agreed to this and began to get my three children in to the car. I sat my eldest (8) in the front as i always sit with my youngest two to ensure they don't fiddle with windows etc.

I then sat my youngest (2) in behind the driver and climbed in to the middle seat. I then turned to lift my third daughter (4) in to the car. However as i held her arms to help her in the driver started driving. At this point i asked him to stop a number of times, 3 or 4, when he didn't i shouted to him that she wasn't in the car, at which point he stopped. I then told my children to get out of the vehicle. By this time all three of my children were clearly very shaken and my 4 year old totally distraught. All the driver said was that he was not aware that she wasn't in the car.

I am exceptionally lucky that;

1. The rear passenger side door did not hit something and crush my daughter, there are bollards along the edge of the pathway.
2. I had a firm grip of my daughter and she did not fall, causing injury or worse being struck by the vehicle.
3. My daughters feet were dragging on the floor, had i not have held her under her armpits and had hold of her hands, her feet would have gone underneath the wheels and she would have been run over.

I do appreciate that the vehicle did not travel any great distance, however it was enough that the outcome could have been very different indeed.

The driver then sped away out of the carpark at which point a bystander came to my aid. Two further onlookers went in to the Asda store and informed the security guard who stated that he had seen the incident. The store manager also came out and said that she would be sure to keep the CCTV footage.

The driver then returned to the rank and continued to collect passengers as if nothing had happened and giving me filthy looks as if the incident were my fault.

I have reported the incident to the police and am awaiting their response. The incident number is CAD24-1173.

I think this driver is a danger to any perspective passengers. The car is a 2008 vehicle and I find it hard to believe that it would not have some sort of indicator to show open doors, and it took me shouting at him because he did not respond to my numerous requests for him to stop. My daughter is now terrified if cars, as is my youngest and to further complicate matters my children are under assessment by community paediatricians and CAHMS for Anxiety and possibly adhd. As you can imagine, this has caused significant distress to my children and myself.

The registration of the vehicle is NA08 FKV with carriage license H21

Agenda Item 3

I will await your response in this matter

Lindsey James


ON THURSDAY THE 24TH OF APRIL I WAS INVOLVED IN AN INCIDENT WITH A POTENTIAL. Agenda Item 3

THE EVENT OCCURRED AS FOLLOWS:

AT APPROXIMATELY 16.40 HRS ON THE 24TH OF ~~APRIL~~ APRIL I WAS APPROACHED BY A FEMALE PASSENGER, ACCOMPANIED BY THREE CHILDREN.

THE LADY INFORMED ME THAT SHE WISHED TO TAKE A TAXI TO FARKINGHAM,

FROM THE OFFSET OF MY AGREEING TO TAKE HER, THE CHILDREN IN HER CARE WERE BEING VERY BOISTEROUS AND BADLY BEHAVED.

WHILST I WAS WAITING FOR THE CHILDREN TO GET IN THE CAR THEY WERE CLIMBING OVER THE REAR SEAT AND ARGUING AND FIGHTING ABOUT SITTING BY THE WINDOW, THEY STARTED KICKING THE BACKS OF THE SEATS, WHEREON I INSTRUCTED THE MOTHER THAT SHE

WOULD NEED TO SIT IN THE REAR OF THE CAR WITH THE TWO YOUNGER SIBLINGS TO AID IN THE CONTROL OF SAID CHILDREN, THE OLDER CHILD WAS INSTRUCTED TO SIT IN THE FRONT, WHOM I ASSISTED IN ENSURING THAT HER SEAT BELT WAS SECURE

THE MOTHER WAS STILL ARGUING WITH THE CHILDREN IN THE REAR ABOUT THE FACT THAT SHE HAD TO SIT IN THE REAR OF THE CAR. THIS CAUSED EVEN MORE CHAOS, AND FOR THE MOTHER TO ENTER INTO A TIRADE OF VERBAL ABUSE AT HER CHILDREN.

31/7/14

IN ALL ^{Agenda Item 3} ~~OF~~ THE CONFUSION AND THE CHARGED ENVIRONMENT OF MY TAXI I WAS SURE THAT ALL PASSENGERS WERE ABOARD.

I THEN PULLED AWAY TO BE SHOUTED AND^A TOLD THAT ONE OF THE CHILDREN HAD NOT COMPLETELY ENTERED THE TAXI.

AFTER VIEWING THE CCTV FOOTAGE OF THE INCIDENT, I WAS HORRIFIED TO SEE THAT HAD MOVED OFF WITHOUT ONE OF THE CHILDREN AND THAT I HAD MISTAKENLY ASSUMED THAT IT HAD BEEN SAFE TO PULL AWAY.

I CAN ONLY EXPLAIN THIS A POOR ERROR OF JUDGEMENT, ENHANCED BY THE EVENTS LEADING UP TO ME PULLING AWAY,

[REDACTED]
31/7/14