

Minutes

Licensing Committee
Friday, 23 August 2024



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Committee members present

Councillor Pam Bosworth (Chairman)
Councillor Elvis Stooke (Vice-Chairman)
Councillor Helen Crawford
Councillor Paul Fellows
Councillor Jane Kingman
Councillor Robert Leadenhams
Councillor Nikki Manterfield

Officers

Licensing Officers, Elizabeth Reeve, Chris Clarke
Licensing Manager, Heather Green
Legal Advisor, Martha Rees
Democratic Officer, Lucy Bonshor

14. Apologies for absence

Apologies for absence were received from Councillor Harrish Bisnauthsing, Councillor Patsy Ellis and Councillor Philip Knowles.

15. Disclosure of interests

Councillor Helen Crawford declared an interest in respect of agenda item 6 as she was acquainted with the driver and therefore left the meeting during consideration of this item.

16. Minutes of the meeting held on 26 July 2024

The minutes of the meeting held on 26 July 2024 were proposed, seconded and **AGREED** subject to the following amendment.....

17. EXCLUSION OF THE PRESS AND PUBLIC

It was proposed, seconded and **AGREED** to exclude the press and public in accordance with Section 100(A) of the Local Government Act 1972 (as amended) during consideration of the following items of business because of the likelihood that otherwise exempt information, as described in paragraphs 1 and 2 of the Act (as amended) would be disclosed them.

(10:14 Councillor Helen Crawford left the meeting)

18. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Decision

The Committee determined that the driver is not a fit and proper person to hold a dual hackney carriage/private hire driving licence pursuant to Section 59 of the Local Government (Miscellaneous Provisions) Act 1976 and Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

It was confirmed that the driver was not present at the meeting but he had submitted a letter for the Committee to consider in his absence and the Legal Advisor asked the Committee whether they wished to proceed in the driver's absence. The Committee **AGREED** to proceed with the matter.

The Licensing Officer then presented the report which concerned the fitness of a driver to hold a Hackney Carriage driving licence due to the accumulation of 12 DVLA points within a period of three years. The Licensing Officer stated that the driver had held a Dual Hackney Carriage and Private Hire Driver's licence with South Kesteven District Council since February 2022. His current licence was due to expire in February 2025.

The Licensing Officer detailed the history of the receipt of the speeding offences together with the Lincolnshire Road Safety Partnership driving assessment tests that had been undertaken. The driver had also undertaken a speeding awareness course; however, this was not a requirement of applying for a Hackney Carriage or Private Hire Licence and the Council had not requested that he complete the course.

In July the Licensing Team had chased up an overdue DVLA check code for 2024 and the driver had confirmed that they had just the day before attended court for a further speeding offence in October 2023. Due to accumulating 12 DVLA points over a three year period the driver had attended the Magistrates Court and due to mitigating circumstances the court had not banned the driver from driving, appendices detailed the circumstances. The driver had held a licence between March 2018 and December 2021 and the Licensing Officer detailed previous enforcement action during this period. Expired driving licence endorsements could be considered as the current Hackney Carriage and Private

Hire Licensing Policy stated that “*Where an applicant has more than one conviction showing a pattern or tenancy irrespective of time since the convictions, serious consideration will need to be given as to whether they are fit and proper*”. The driver had submitted a mitigating statement and supporting letter and these were appended to the report.

It was for the Committee to determine whether the driver was a fit and proper person to hold a dual Hackney Carriage/Private Hire driver’s licence taking into account the number of DVLA endorsements since holding a licence with South Kesteven. The Committee were reminded to have regard to all relevant guidance and policies including the Council’s current Hackney Carriage and Private Hire Licensing Policy and the Department of Transport Standards.

(10:20 the Licensing Officers left the meeting)

Members considered the issue before them, taking in to account the report, appendices, the letter received, legislation and the Council’s Hackney Carriage and Private Hire Licensing Policy together with the Councillor Handbook. Members expressed concern that the driver did not appear to have “learnt their lesson” by the number of speeding offences that they had received and the Lincolnshire Road Safety Partnership driving assessment tests undertaken. Members did consider a possible suspension but felt that it would not achieve the desired outcome. Members were also conscious that the driver undertook school contracts and that public safety was paramount and it was felt that the only reasonable and proportionate response open to them was that the driver was not a fit and proper person to hold a Hackney Carriage Driver’s Licence, on being put to the vote this was **AGREED**.

(10:42 the Licensing Officers returned to the meeting)

The Legal Advisor read out the Committee’s decision. The Committee had considered whether the driver was a fit and proper person to hold a Hackney Carriage Driver Licence having accumulated 12 DVLA points within three years.

The driver was unable to attend the meeting but had sent a letter for the Committee to consider in their absence. The Committee decided to continue to determine the matter in the driver’s absence.

Members heard from the Licensing Officer details of the drivers’ history of speeding and the number of DVLA points accumulated during the course of his current licence and also during the period 2016-2019 when the driver had held a Hackney Carriage Driver’s licence.

The Committee also considered the letter submitted by the driver; giving details of the need to retain a driving licence and that the court had not taken away his driving licence.

In reaching their decision the Committee had taken into consideration the report, appendices, legislation, the Council’s Hackney Carriage and Private Hire

Licensing Policy and the Councillor Handbook together with the letter received from the driver. Of particular note to Members was the drivers' prolific history of speeding, but also the fact that the driver transported children on school contracts. Public safety was of paramount importance, and the Committee held licensed drivers to a high standard in that regard.

Taking everything into consideration, the Committee determined that the driver was not a fit and proper person, and considered it reasonable and proportionate to revoke his Hackney Carriage/Private Hire Driver Licence.

There was a right of appeal of the decision to the Magistrates' Court within 21 days of receipt of written notice.

(10:45 Councillor Crawford returned to the meeting)

As the driver in respect of agenda item 6 was not present, the Chairman changed the order of the agenda and dealt with agenda item 7 next.

19. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Decision

The Committee determined that the Council's policy regarding the Driver Proficiency Assessment cannot be waived. However, taking into account that the driver's vehicle was a specialist and fully wheelchair accessible vehicle, the Committee determined that this element of the policy should be waived in this one instance.

The driver confirmed his name for the Committee.

The Licensing Manager presented the report which asked the Licensing Committee to determine whether the Euro 6 requirement for a wheelchair accessible vehicle and driver proficiency assessment should be adhered to in line with the Hackney Carriage and Private Hire Policy dated June 2024.

Following the issue of the Department for Transport (DfT) of updated Taxi and Private Hire Guidance in November 2023, the Hackney Carriage and Private Hire Licensing Policy was updated and approved by Council on 23 May 2024. One of the amendments related to the removal of the previous vehicle age limits both at first registration (no older than 5 years) and maximum age limit (10 years), replacing it with a requirement for all vehicles to be Euro 6 compliant, registered after September 2015.

An addition to the policy was to require all drivers, new and existing to undertake a driver proficiency assessment. The new Policy would be effective from 1 June 2024 for all new applicants, but for existing drivers/vehicles changes would be effective from their next renewal date after 1 August 2024.

The driver before the Committee had a wheelchair accessible hackney carriage which had been licensed since September 2016. The existing licence expired in September 2024 and having checked the Euro rating the vehicle was only Euro 5 and was not compliant with the Council's policy.

An email had been received from the driver, appended to the report requesting that the policy requirements for undertaking a driver proficiency assessment be reconsidered together with vehicles being Euro 6 compliant. The driver had been invited to Committee to present his case.

The driver then made his representation. In respect of taking a driver proficiency test, they had held a hackney carriage licence for over 19 years. For the proficiency test, the tester usually sat in the front passenger seat however, in their vehicle that wasn't possible, and they would have to sit in the back. Courses in respect of the disability awareness courses tended to be on-line and they felt that they were not technology proficient to access these courses, although they had found one organisation to have in person testing, they were not a recommended provider within the SKDC Policy and therefore did not have South Kesteven District Council as a registered contractor.

The drivers then spoke in respect of the requirement for vehicles to be Euro 6 rating. They felt that the "goal posts" had been moved. They had bought their vehicle on the understanding that it would be a taxi for a period of 10 years, however with the changes to the Policy this had reduced to seven and therefore had cost implications. They felt that it was unfair, especially as the vehicle was purpose built and one of the very few purpose built, wheelchair accessible vehicles in the district. The driver felt that the policy should include exceptions for this type of vehicle not having to be Euro 6 compliant.

Members then questioned the driver in respect of the vehicle and the costs involved to which the driver replied. Questions were also asked in respect of taking the driver proficiency test in person rather than on-line and the Licensing Manager stated that this would be looked into as a matter of urgency. Reference was also made to the number of Uber drivers located in the district from Wolverhampton and the lack of testing required to drive an Uber and the driver felt that it was grossly unjust.

(11:03 Licensing Officers and driver left the meeting)

Members discussed the matter before them taking into account the Council's Hackney Carriage and Private Hire Licensing Policy and all other relevant guidance and policies and the representation made. Members felt that when the Policy had been discussed reference to wheelchair accessible vehicles had not fully considered and it was felt that perhaps these should have been included within the vehicle exemptions especially as there was a lack of these vehicles across the district. Members did have some sympathy for the driver and felt that the Policy and the issue of wheelchair accessible vehicles and their ratings should be reviewed by the relevant Overview and Scrutiny Committee at the

earliest opportunity. Further discussion then followed in respect of the driver proficiency aspect and access to the disability awareness courses and it was acknowledged that the Licensing Manager would be looking into in person courses in respect of the disability awareness courses. Members felt that the driver proficiency was of paramount importance and therefore there would be no exemption. More discussion followed in respect of the wheelchair accessible vehicle and Members felt that due to the limited number of these type of vehicles available in the district that in this particular instance the need to be Euro 6 compliant in respect of this particular vehicle would be waived. On being put to the vote this was unanimously **AGREED**.

(12 noon Licensing Officers returned to the meeting, the driver did not return to the meeting as he had a prior engagement)

The Legal Advisor read out the Committee's decision. The Committee had convened to consider whether the Euro 6 requirement of the Council's Licensing Policy and the Driver Proficiency Assessment policy should apply to the driver's renewal applications that had been received by the Authority in respect of their licensed vehicle and Hackney Carriage/Private Hire Drivers Licence.

The Committee heard from the Licensing Manager changes to the Authority's policy, which removed the age of licensed vehicles and replaced it with a requirement that vehicles must meet Euro 6 standard instead. Additionally, the Authority's policy required drivers to undertake a proficiency assessment.

The driver stated their grievances with the two policy requirements; namely in respect of the proficiency assessment and that they struggled with online courses, but also that they had been driving for 19 years and any examiner may not have the same experience as them, and how could they effectively examine the driver.

In respect of the Euro 6 standard policy, they explained to Members how they felt the Authority had moved the goalposts; when they had purchased the current vehicle, they had anticipated being able to use it for ten years. Now, following the policy change, they would only be able to use it for seven years and that has considerable financial implications. The driver explained that they were one of very few drivers offering a fully wheelchair accessible hackney carriage, and it had been purchased especially for this use.

The driver had asked the Committee to disapply both elements of the policy in respect of the renewal applications.

In reaching their decision the Committee had taken into consideration the report, appendices, the representation made, legislation and the Council's Hackney Carriage and Private Hire Licensing Policy. Of particular note to the Committee was the fact that the driver's vehicle was one of very few fully wheelchair accessible vehicles operating in the district, which provided a much needed service.

The Committee noted that there were no other reported issues in respect of the driver's vehicle and its licence renewal.

The Committee considered the wording of the policy and noted that there were exemptions for some vehicles, but not fully wheelchair accessible vehicles.

With regards to the Driver Proficiency Assessment, the Committee considered this to be of paramount importance to maintain the standard of licensed drivers, and noted the officer's comments that they would urgently look into in-person courses.

Taking everything into consideration, the Committee determined that the Council's policy regarding the Driver Proficiency Assessment could not be waived. However, taking into account consideration that the driver's vehicle was a specialist and fully wheelchair accessible vehicle which was in high demand in the district, the Committee determined that this element of the policy should be waived in this one instance.

There was a right of appeal of the decision to the Magistrates' Court within 21 days of receipt of written notice.

20. LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

Decision

The Committee determined that the driver was not a fit and proper person to hold a Hackney Carriage Driver's Licence pursuant to Section 59 of the Local Government (Miscellaneous Provisions) Act 1976.

The Committee agreed to continue to determine the matter before them in the driver's absence.

The Licensing Manager presented the report which concerned whether a driver was a fit and proper person to hold a Hackney Carriage Licence having failed to comply with the requirements of the Council's Hackney Carriage and Private Hire Licensing Policy.

The Licensing Manager stated that the driver had held a Hackney Carriage Drivers Licence with South Kesteven District Council since November 2015. The licence was due for renewal in November 2024. An ongoing requirement to hold a hackney carriage badge was that drivers had to subscribe to the Disclosure and Barring online update service with a valid DBS certificate. The driver had subscribed to the DBS Update Service and subsequent six monthly checks carried out up to November 2022. When a check was initiated in May 2023 it was found that the subscription was no longer valid. The driver was contacted advising that a new DBS certificate was required but no response was received. Chasing emails were sent and documentation was submitted in August 2023. It

was confirmed that the DBS certificate had been sent to the driver in December 2023. The driver was notified in November 2023 that the annual driver licence check was required. Although various reminders had been sent to the driver by telephone and email no response had been received. The report also detailed previous enforcement action that had been carried out. Due to the lack of response the driver was invited to attend the Committee and a copy of the report was provided.

In August 2024 the Licensing Team received an email from the driver enclosing a copy of the DBS certificate and the DVLA driver check code and was advised that they could not attend the Committee. On reviewing the DBS certificate and DVLA check code issues were found as outlined in the supplementary report circulated. The driver now had nine DVLA penalty points which had not been notified to the Authority as required by the Hackney Carriage and Private Hire Policy.

Questions were asked of the Licensing Manager in respect of notice periods and when the driver had been contacted to which the Licensing Manager replied.

The Licensing Manager then gave her closing statement asking Members to consider the report and supplementary papers circulated and determine whether the driver remained a fit and proper person to hold a Hackney Carriage Drivers Licence.

(12:10 Licensing Officers left the meeting)

Members considered the issue before them having regard to the report and appendices, relevant guidance and the Council's Hackney Carriage and Private Hire Licensing Policy. Members were concerned about the lack of communication on the driver's behalf with the Authority and what seemed a lack of understanding in knowing what was expected of him as a licensed hackney carriage driver, especially as he had held a licence since 2015. It was felt that a reasonable and proportionate response was that the driver was not a fit and proper person to hold a Hackney Carriage Driver's licence and the licence be revoked. On being put to the vote this was unanimously **AGREED**.

(12:25 the Licensing Officers returned to the meeting)

The Legal Advisor read out the Committee's decision. The Committee had taken into consideration the report, supplementary papers, legislation and the Council's Hackney Carriage and Private Hire Licensing Policy. Members heard from the Licensing Manager who detailed the driver's history of failing to provide their DBS certificate and check codes, also their previous history of receiving SKDC penalty points for failing to follow procedure such as failing to disclose convictions for speeding to the Authority. Members heard that recently submitted documents by the driver were out of date and disclosed a further speeding conviction.

Of particular note to the Committee was the fact that the driver had been licensed since 2015, and so should know the rules and procedures that the Authority required them to comply with, and despite this, the driver repeatedly failed to do so and it was also noted that the driver had failed to disclose a further speeding offence.

Taking everything into consideration, the Committee determined that the driver was not a fit and proper person to hold a Hackney Carriage Drivers Licence and it was reasonable and proportionate to revoke the licence.

The decision was appealable to the Magistrates Court within 21 days of receipt of the written notice.

21. Any other business which the Chairman, by reason of special circumstances, decides is urgent.

None.

22. Close of meeting

The meeting closed at 12:25.