

## LICENSING COMMITTEE

Minutes of a Special meeting of the Licensing Committee held in Conference Room 1a, County Hall, Ruthin on Thursday, 23 June 2016 at 9.30 am.

### PRESENT

Councillors Joan Butterfield, Bill Cowie, Hugh Irving, Barry Mellor, Arwel Roberts, David Simmons and Cefyn Williams (Chair)

### ALSO PRESENT

Principal Solicitor (AL), Public Protection Business Manager (IM), Licensing Enforcement Officer (HB) and Committee Administrator (KEJ)

#### 1 APOLOGIES

Councillors Stuart Davies, Merfyn Parry, Pete Prendergast and Huw Williams

#### 2 DECLARATION OF INTERESTS

No declarations of personal or prejudicial interest had been raised.

#### 3 URGENT MATTERS AS AGREED BY THE CHAIR

No urgent matters had been raised.

### EXCLUSION OF PRESS AND PUBLIC

*RESOLVED that under Section 100A of the Local Government Act 1972, the Press and Public be excluded from the meeting for the following item of business on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 12 and 13 of Part 4 of Schedule 12A of the Act.*

#### 4 REVIEW OF A LICENCE TO DRIVE HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES - DRIVER NO. 15/1124/TXJDR

A confidential report by the Head of Planning and Public Protection (previously circulated) was submitted upon –

- (i) the suitability of Driver No. 15/1124/TXJDR to hold a licence to drive hackney carriage and private hire vehicles following accrual of 40 penalty points under the Council's penalty point scheme for twice presenting a licensed vehicle for test in an unsafe and dangerous condition;
- (ii) the Driver having previously appeared before the Licensing Committee on 10 June 2015 following accrual of 20 penalty points for presenting a licensed vehicle for test in an unsafe and dangerous condition which had resulted in a two week suspension;

- (iii) details of the defects noted following presentation of the vehicle for a Compliance/MOT Test in April 2016 and the issue of a further 20 penalty points had been included within the report together with associated witness statements and documentation;
- (iv) the Driver having submitted documentary evidence in support of his licence review including an MOT Test/Compliance Certificate for the vehicle dated 19 May 2016 together with a letter of appeal against the penalty points (the appeal having been subsequently dismissed by officers), and
- (v) the Driver having been invited to attend the meeting in support of his licence review and to answer members' questions thereon.

The Driver was in attendance and accompanied by his Union Representative. The Union Representative confirmed receipt of the report and committee procedures.

The Licensing Enforcement Officer (LEO) outlined the case as detailed within the report. Whilst the vehicle had not been presented for retest at the time of writing the report members were advised that the vehicle had subsequently passed an MOT/Compliance Test on 19 May 2016.

The Union Representative presented the Driver's case arguing that he had actively sought guidance and assurance regarding the vehicle's condition. The vehicle had been presented for MOT testing on 4 April 2016 and repair work had been carried out which had resulted in an MOT Certificate being issued on 13 April 2016. The vehicle had subsequently failed the MOT and Compliance Test at the Council's Designated Testing Station on 14 April 2016 with a clear difference of opinion between the two vehicle examiners. The Union Representative sought to highlight a number of inconsistencies in the report and put questions to the LEO in that regard. In response the LEO clarified the extent of his involvement in the investigation and his reliance on the documentary evidence and statement provided by the Compliance Engineer who had carried out the test on 14 April 2016 which demonstrated that the vehicle had been presented for test in an unsafe, dangerous and poor condition. With regard to the Driver's conduct the Union Representative submitted that he had acted in good faith when presenting the vehicle for inspection on 14 April 2016 given that it had passed an MOT Test the previous day. The Driver had submitted a number of receipts and invoices (circulated at the meeting) to demonstrate the vehicle repairs which had been carried out. Reference was also made to a number of defects which had not been dealt with consistently during previous testing regimes. The differences between the mechanical fitness as evidenced by the MOT Test and the requirements of the Compliance Test were also highlighted. Concerns were also expressed by the Union Representative regarding the terminology used within the report when considering whether the Driver was fit and proper to hold a licence. Members clarified the reasoning behind the use of the standard phrase when determining fitness. In closing his submission the Union Representative argued that the Driver had taken reasonable steps to ensure that his vehicle was compliant when it was presented for test on 14 April and he was clearly not a danger to the public.

Members took the opportunity to question the Driver and his Union Representative on their submission and the facts of the case as they had been presented. Questions were asked regarding specific defects which had been identified and steps taken by the Driver to ensure that the vehicle was fit for purpose when transporting members of the public together with questions regarding its general use. Assurances were also sought regarding lessons learned from when the Driver had last been before the committee in June 2015. The Driver responded that he had presented his vehicle for an MOT Test at an earlier stage in order to address any outstanding issues prior to its submission for MOT/Compliance Testing at the Council's Designated Testing Station.

The Union Representative took the opportunity to make a final statement. He submitted that the Driver had attempted to be careful by submitting the vehicle for MOT testing beforehand and had ensured that repair works were carried out which had resulted in the vehicle passing the MOT Test on 13 April 2016. He argued that it was reasonable for the Driver to trust that the vehicle was compliant when submitting the same for an MOT/Compliance Test the following day.

The committee adjourned to consider the case and it was –

***RESOLVED*** that the hackney carriage and private hire vehicle driver's licence issued to Driver No. 15/1124/TXJDR be revoked on public safety grounds with immediate effect.

The reasons for the Licensing Committee's decision were as follows –

Members had carefully considered the contents of the report together with the submissions presented for the Driver in this case and his response to questions.

The committee did not consider the Driver to be a fit and proper person to hold a licence and resolved to revoke the licence on the grounds of public safety.

The committee considered that the Driver had failed in his duty of care to his fee paying passengers. On his own admission, he used the vehicle to carry groups of people on a night out and to airports.

It was accepted that the Driver presented his vehicle for an MOT Test on 4 April 2016 whereupon it failed. At this point the committee noted that this in itself demonstrated that the Driver had not maintained his vehicle to an acceptable standard. Subsequently, the Driver had some work undertaken on the vehicle and presented to the committee one receipt dated 13 April 2016. On examination the committee determined that this had not addressed all of the issues which had resulted in the MOT failure on 4 April 2016. The vehicle was subsequently retested on 13 April 2106 whereupon it passed. The vehicle was then presented for its Compliance Test and MOT Test at the Council's Designated Testing Station. At this point the vehicle failed to pass either test, raising a number of serious defects identified on the vehicle. As a result the vehicle licence was suspended and the Driver was unable to drive it as a Hackney Carriage or Private Hire Vehicle.

The Driver presented to the committee a number of receipts demonstrating that he had had work carried out on the vehicle. On close inspection of these receipts it was evident that this work had been carried out on the vehicle between July 2015 and December 2015, some many months prior to it being presented for testing in April 2016. Many of the issues and defects listed in both the MOT Test and the Compliance Test, in the opinion of the committee, would have been visible and apparent to a lay person, let alone a professional driver.

The committee also took into consideration the fact that the Driver had been issued with 20 penalty points the previous year for the condition of his vehicle at that time, and for which he was issued with a two week suspension. The committee was satisfied that the Driver had taken insufficient steps to maintain the integrity and safety of his vehicle, which was borne out by the defects found. The Driver had a duty to ensure that his vehicle stood up to scrutiny particularly in the event of an accident. If he knew there were defects, and in the opinion of the committee it was felt that many of the defects would have been obvious to him, this was a reflection on his conduct as a Driver and brought into question his integrity and fitness to be a licensed driver. The committee felt that the Driver had a flagrant disregard for his duties and responsibilities as a driver licensed to drive members of the travelling public.

The Council revoked the licence pursuant to Section 61 (1) (b) on the basis of **any other reasonable cause**. Furthermore, pursuant to Section 61 (2B), as occurred in this case, it was considered that there was an immediate risk to public safety and as such the revocation needed to take place immediately.

The grounds of public safety were met in the opinion of the committee because he had disregarded his responsibilities by failing to look after his vehicle.

- he presented his vehicle for a test when it failed on 4 April 2016.
- he presented the vehicle for an MOT test and compliance test when it would have been obvious to anyone (let alone a professional driver) that there were defects with the vehicle.
- the serious and dangerous condition of the vehicle itself.
- his previous disregard for his vehicle having been issued with 20 penalty points the previous year and being suspended for two weeks at that time.

The committee's decision and reasons therefore were conveyed to the Driver and his Union Representative together with the right of appeal against the decision.

The meeting concluded at 11.15 a.m.