



Leicester
City Council

Minutes of the Meeting of the
LICENSING ENFORCEMENT SUB-COMMITTEE

Held: TUESDAY, 4 MAY 2021 at 10:00 am

P R E S E N T:

Councillor Pickering (Vice-Chair in the Chair)

Councillor Cank

Councillor Westley

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1. APPOINTMENT OF CHAIR

Councillor Pickering was appointed as Chair for the meeting.

It was noted that the hearing of the applications were held virtually in accordance with the Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales)(Regulations) 2020 (the 2020 Regulations) and in accordance with the Council's own Remote Procedure Rules.

2. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Thomas.

3. DECLARATIONS OF INTEREST

There were no declarations of interest.

4. MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting of the Licensing Enforcement Sub-Committee held on 2 March 2021 be approved as a correct record.

5. PRIVATE SESSION

RESOLVED:

That the press and public be excluded during consideration of the following reports in accordance with the provisions of Section 100A(4) of the Local Government Act 1972, as amended, because it involves the likely disclosure of 'exempt' information, as defined in the Paragraphs detailed below of Part 1 of Schedule 12A of the Act, and taking all the circumstances into account, it is considered that the public interest in maintaining the information as exempt outweighs the public interest in disclosing the information.

Paragraph 1

Information relating to an individual.

Paragraph 2

Information which is likely to reveal the identity of an individual.

Paragraph 3

Information relating to the financial or business affairs of any particular person (including the authority).

B1) Determination of Continued Entitlement to Retain a Hackney Carriage and Private Hire Vehicle Drivers Licence

B2) Application made under the Scrap Metal Dealers Act 2013

6. DETERMINATION OF CONTINUED ENTITLEMENT TO RETAIN A HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVERS LICENCE

Introductions were made and the Chair outlined the procedure of the meeting to those present.

The Director of Neighbourhoods and Environmental Services submitted a report that required Members to determine a driver's continued entitlement to retain a Hackney Carriage and Private Hire Vehicles Driver's Licence.

The Licence Holder and his legal representative and translator were present. The Licensing Team Manager, and Legal Adviser to the Sub-Committee were also present.

The Licensing Team Manager outlined details of the application, including the relevant City Council Policy Guidelines.

The Licence Holder and his legal representative were invited to set out the reasons why he ought to be allowed to continue to hold a Hackney Carriage and Private Hire Vehicle Driver's Licence and answered questions from Members.

All parties were then given the opportunity to sum up and make any final comments,

The Sub-Committee received legal advice from the Legal Adviser to the Sub-

Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced in writing within five working days. The Chair informed the meeting the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officers to disconnect from the meeting. The Sub-Committee then deliberated in private to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the Hackney Carriage and Private Hire Vehicle Driver's Licence be **SUSPENDED FOR SIX MONTHS**

Members had carefully considered the Committee Report placed before them. Members had taken account, where appropriate, of the Department for Transport's "Statutory Taxi & Private Hire Vehicle Standards", the Regulators' Code and the Council's "Guidelines on relevance of convictions Hackney Carriage and Private Hire Vehicle Drivers". Members had taken account of the oral and written representations.

The Licence Holder had held a Hackney Carriage and Private Hire Vehicle Driver's Licence since 26 April 2013.

On 30 September 2019, the Licence Holder was convicted at trial before the Leicester Magistrates' Court of an offence of battery contrary to section 39 Criminal Justice Act 1988. He was made subject to a 12-month Conditional Discharge and was ordered to pay £200 costs, £50 compensation, and a victim surcharge of £20.

The conviction fell within the category of 'Other Offences' under the Council's Guidelines on Relevance of Convictions which in the absence of exceptional circumstances, provided for a period free from conviction for such offending which is 'dependent on circumstances'.

Members had considered the nature, type and circumstances of the Licence Holder's offending which arose out of an incident on 12 February 2019 when The Licence Holder headbutted another man. The Licence Holder informed Members that he was provoked by the injured party. Members noted that the Court rejected the Licence Holder's self-defence argument and awarded a small amount of compensation to the injured party.

The Licence Holder was required, in accordance with his Licence, to immediately notify the Council of the conviction. The Licence Holder did not notify his conviction to the Council immediately or at any time. The Licensing Section only became aware of the conviction when informed by Wolverhampton City Council on 13 January 2021, some 16 months after the conviction.

The Licence Holder's explanation for failing to notify the Council was that he did not appreciate the obligation and was in no way looking to evade the scrutiny of the Committee.

Members had been informed that Wolverhampton City Council refused an application by The Licence Holder in November 2020 for a Driver's Licence, but Members had decided the matter before them on its own merits.

Members had not been advised of any history of customer complaint against the Licence Holder.

Members were mindful that the protection of the public was their overriding consideration. However, Members noted that the incident on 12 February 2019 was not related to the Licence Holder's employment as a taxi driver. Members noted the Licence Holder's explanation of his actions and his indication that this was an isolated incident very much determined by its particular circumstances.

Members noted that when a driver failed to provide the Council with required information, the driver hindered the Council's ability to exercise its regulatory functions. Despite the explanation provided by the Licence Holder, he should have been aware of the requirement to notify the Council of his conviction. He had been licensed by the Council for approximately 8 years and the requirement was detailed on the front page of his Licence. However, Members took due note of the absence of customer complaint against The Licence Holder in his 8 years as a driver licensed by Leicester City Council.

Members found the circumstances presented to them in this case, constitute grounds under both section 61(1)(a)(i) and section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and that it was appropriate, in the particular circumstances of this matter, to suspend the Licence for a period of 6 months.

A period of suspension would emphasise to the Licence Holder the need for future compliance to protect the public.

The Licence Holder would be informed of his right to appeal the decision to the Magistrates' Court within the period of 21 days beginning with the day on which he was notified of the decision. The suspension would not have effect until that 21-day period had expired, or if the decision was appealed against, until the appeal was disposed of.

7. APPLICATION MADE UNDER THE SCRAP METAL DEALERS ACT 2013

Introductions were made and the Chair outlined the procedure of the meeting to those present.

The Director of Neighbourhood and Environmental Services submitted a report that required Members to determine an application made under the Scrap Metal Dealers Act 2003.

The Licensing Team Manager, Licensing Enforcement Officer, PC Benjamin Broad (Leicestershire Police) PC Kaajal Jethwa (Leicestershire Police), DS David Wadsworth (Leicestershire Police), and the Legal Adviser to the Sub-Committee were present.

The applicant had been provided with all papers in the case but did not attend the meeting or submit any further representations to the written representations previously submitted.

The Licensing Team Manager outlined details of the application, including the relevant statutory provisions. With the assistance of the Licensing Enforcement Officer, he outlined the Licensing Section's representations against the grant of the application.

DS Wadsworth outlined the reasons for Police representations against the grant of the application.

All parties present were then given the opportunity to sum up their case and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced in writing within five working days. The Chair informed the meeting the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officers to disconnect from the meeting. The Sub-Committee then deliberated in private to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the application made under the Scrap Metal Dealers Act

2013 be REFUSED.

The Sub-Committee had considered an application by Attock Metals and the legal representative for the applicant for a Scrap Metal Dealer's Licence in respect of a site at 19 Kent Street, Leicester.

No Company representative attended the hearing. Members had considered all the written representations previously submitted and the oral representations presented at the hearing by the Police and the Licensing Section. Members had taken account of the Statutory Guidance and the Regulators' Code.

The site was at the rear of a garage business on Kent Street and consisted of a yard area and a small prefabricated office. Access to the site was via a side entrance off Kent Street. The Company rented the site from the owner of the garage. The Company had been in existence for almost 10 years, having been incorporated on 05 September 2011. The applicant had been the sole director of the Company since 01 May 2019 and was to be the site manager if the Licence was granted.

By way of history, Members noted that in 2017, when the applicant's father was the sole director of the Company, the Council granted a 3-year Site Licence to the Company for a site at Humberstone Road, Leicester expiring on 25 February 2020. On 01 May 2019, the applicant became the sole director of the Company when his father resigned his position. In July 2019, the Company moved its site from Humberstone Road to Kent Street. It did not make the required application to vary the Licence to include the new site, so it was at that time carrying on business as a scrap metal dealer without a licence. On 14 and 16 October 2020, the Police visited the Kent Street site. On 22 October 2020, an online application was submitted to renew and vary the Humberstone Road Licence so as to change the site details to Kent Street. However, as the Humberstone Road Licence had expired on 25 February 2020, there was no Licence to renew. On 27 November 2020, the Council issued a Closure Notice detailing the unlicensed business operation should cease. On 27 November 2020, an online application was submitted for a new Licence at the Kent Street site.

In accordance with section 3 of the Scrap Metal Dealers Act 2013 Members must not grant the application unless they were satisfied that the Company was a suitable person to carry on business as a scrap metal dealer. In determining whether the Company is a suitable person, Members were required to have regard to whether the applicant, as the sole director of the Company, was a suitable person.

The Police and the Council's Licensing Section had made representations against the grant of the Licence. They both referred to having no confidence in the applicant to operate within the legislation.

Due to the inability to assess reliability, Members had given no weight the information provided by the Police that in October 2020 "... intelligence was received that Attock Metals was regularly taking stolen catalytic converters and

paying cash for them, the motivation and reliability of the source is unknown ...”

The Police had provided information regarding two site visits to the Kent Street premises on 14 and 16 October 2020. While the legal representative for the applicant, in correspondence suggested on behalf of the Company, that Members should have disregarded the Police evidence regarding those site visits, Members were satisfied that it was right for them to take it into account. Members had balanced it against the written information provided by the applicant and the legal representative for the applicant.

The Police indicate that the applicant did not have complete records of receipts and purchases of metals, as required under sections 13 and 15 of the Scrap Metal Dealers Act 2013. The applicant disputed this as regards records of receipts but accepted that records of sales were not kept in accordance with sections 14 & 15.

The applicant admitted that Kent Street site was operated without a Licence from July 2019 until October 2020 when he realised at the Police site visit on 14 October 2020 that the Humberstone Road Licence had expired. The applicant provided a twofold explanation for this.

As regards the period July 2019 to 14 October 2020, the applicant had indicated he believed the Licence for Humberstone Road would also cover the Kent Street premises. The legal representative for the applicant had referred to this as an innocent mistake.

As regards the period 26 February 2020, the applicant had also indicated that he didn't realise the Licence for Humberstone Road had expired. The legal representative for the applicant referred to this as an oversight caused by the strains of trying to keep a small business afloat during a national pandemic.

The legal representative for the applicant indicated that the Humberstone Road Licence lapsed during the backdrop of the Company relocating premises after 10 years when the Company was undergoing a change in ownership and direction during the Coronavirus pandemic.

However, the Licensing Section pointed to evidence that the Company had continued to operate as a scrap metal dealer following the Police visits in October 2020 and following the service of a Notice of Closure on 27 November 2020. Members were told that in the period February 2020 to March 2021, the Company traded consistently for 11 of those months receiving approximately £13,925 from T Watts Waste Management for the sale of metal.

In accordance with section 3 of the Scrap Metal Dealers Act 2013, in determining whether the Company and the applicant were suitable persons, Members might have had regard to any information they considered to be relevant.

Members noted that neither the Company nor the applicant had any criminal convictions. Members also noted that neither had been the subject of any

relevant enforcement action. It might have been the case that the Company and the applicant were prosecuted under the Scrap Metal Dealers Act 2013 in due course. In that event, they would at that time be subject to relevant enforcement action, but at the present time they were not. Members had not been informed of any previous refusals or revocations of relevant Licences other than the Council's obvious refusal to accept the application to renew the already expired Humberstone Road Licence.

Members noted the civil proceedings in the High Court in 2018 in which both the Company and the applicant's father, who was then the sole director, were found to be in contempt. Those proceedings related to a failure to comply with Undertakings given in Court proceedings in 2014.

The Licensing Section and the Police did not believe the Company had adequate measures in place to comply with the requirements of the Scrap Metal Dealers Act 2013 in the form of record keeping regarding transactions and the identity of the suppliers of metal. Members agreed.

Members noted that subsequent to the Police visits to the Kent Street site in October 2020, the applicant had admitted, through their legal representative that records of sales were not kept in accordance with sections 14 and 15 of the Scrap Metal Dealers Act 2013.

Members found that there has been a clear lack of care in relation to the failure to seek variation of the Humberstone Road Licence to detail the Kent Street site and in the failure to renew the Licence. This had led to the unlicensed operation of the Kent Street site since July 2019.

The applicant had informed Members in writing that the operation as a scrap metal dealer ceased in October 2020 following the Police visits to the site and the realisation at that time that the Humberstone Road Licence had expired in February 2020. However, the Licensing Section informed Members that the Company continued to operate as a scrap metal dealer subsequent to October 2020 and thereafter, even subsequent to the issue of a Closure Notice in November 2020, receiving approximately £13,925 in the period February 2020 to March 2021 for the sale of metal.

In these circumstances, Members had no confidence that there would be future compliance with the required legislation. Members were not satisfied that that Attock Metals and the legal representative for the applicant and the applicant were suitable persons and therefore refused the application.

The applicant would be informed they may appeal the decision within 21 days to the Magistrates Court.

8. ANY OTHER URGENT BUSINESS

There being no other urgent business, the meeting closed at 12.34pm.