

# Cheltenham Borough Council

## Licensing Committee – 4 September 2015

### Review of Hackney Carriage Driver's Licence

#### Mr Barry Lewis

#### Report of the Licensing Officer

#### 1. Executive Summary and Recommendation

1.1 Mr Barry Lewis has held his Hackney Carriage driver's licence with Cheltenham Borough Council since 2002.

1.2 On 10 August 2015 Mr Lewis was convicted of 2 offences under the Health Act 2006. Details of the conviction and Mr Lewis's conviction history are included in background papers.

1.3 In light of this Members of the Committee should be aware of the conviction because of:

1.3.1 The nature of the offences; and

1.3.2 The need to ensure that Mr Lewis is judged to be a fit and proper person to hold a Hackney Carriage driver's licence.

**1.4 The Committee is recommended to resolve that Mr Lewis's Hackney Carriage driver's licence be:**

**1.4.1 permitted to continue with no further action taken because the Committee considers Mr Lewis to be a fit and proper person to hold such a licence, or**

**1.4.2 revoked because the Committee considers Mr Lewis to no longer be a fit and proper person to hold such a licence.**

**1.4.3 Subject to 1.4.2, if the Committee determines that Mr Lewis's licence should be revoked as he is not a fit and proper person, the Committee may also consider whether that revocation should have immediate effect in the interests of public safety.**

#### 1.5 Implications

1.5.1 Financial

**Contact officer: Sarah Didcote  
E-mail: [sarah.didcote@cheltenham.gov.uk](mailto:sarah.didcote@cheltenham.gov.uk)  
Tel no: 01242 264125**

1.5.2 Legal

There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.  
**Contact officer: Vikki Fennell  
E-mail: [Vikki.Fennell@tewkesbury.gov.uk](mailto:Vikki.Fennell@tewkesbury.gov.uk)  
Tel no: 01684 272015**

## **2. Background**

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

## **3. Policy Considerations**

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.
- 3.5 The Health Act 2006 prohibits smoking in enclosed places; all licensed vehicles are designated as an enclosed public space and therefore it is unlawful for any person to smoke in a licensed vehicle at any time, including any time when it is not being used for hire.

## **4. Licensing Comments**

- 4.1 The role of the Committee is to ensure that the people licensed by the Council as Hackney Carriage drivers are fit and proper people to hold such a licence. The overriding consideration is the safety of the public and Members should take into account whether the applicant or licence holder has demonstrated that they are capable of abiding by the law and the conditions that their licences are subject to.
- 4.2 Both the Health Act 2006 and Cheltenham Borough Council's adopted licensing policy make clear that it is unlawful for any person to smoke in a licensed hackney carriage or private hire vehicle at any time, even if it is not being used for the purpose of carrying passengers at the time.
- 4.3 Members will see from the background papers that Mr Lewis has a significant history of offences of this nature. The matter is being referred to the Committee because the consistent repetition of the offence brings into question whether Mr Lewis is a fit and proper person to hold a Hackney Carriage drivers licence.
- 4.4 Mr Lewis has been sent a copy of this report and invited to attend this meeting to speak and to answer Members' questions or to be represented. Members should have regard to the adopted Probity Guide.

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**Background Papers**

Service Records

Convictions

**Report Author**

**Contact officer:** Philip Cooper

**E-mail:** [licensing@cheltenham.gov.uk](mailto:licensing@cheltenham.gov.uk)

**Tel no:** 01242 775200