

# REGULATORY COMMITTEE AGENDA

Tuesday, 18 October 2016 at 1.30 pm in the Bridges Room - Civic Centre

From the Acting Chief Executive, Mike Barker

Item Business

**1 Apologies**

**2 Minutes** (Pages 3 - 4)

The Committee is asked to approve the minutes of the last meeting.

**3 Appeals and Prosecutions** (Pages 5 - 6)

Report of the Acting Chief Executive

**4 Licences, Permits and Registrations Issued** (Pages 7 - 8)

Report of the Strategic Director, Communities and Environment

**5 Exclusion of the Press and Public**

The Committee may wish to exclude the press and public from the meeting during consideration of the following items on the grounds indicated:-

Item No	Paragraphs of Schedule 12A to the Local Government Act 1972
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**6 Summary of Decisions from Last Committee** (Pages 9 - 38)

Report of the Acting Chief Executive

**7 Hackney Carriage and Private Hire Licensing Issues (Paragraph 7)**  
(Pages 39 - 78)

Report of the Strategic Director Communities and Environment

	Reference	Issue
1.	RC/25/16	Review of Dual (Hackney Carriage Private Hire) Driver Licence
2.	RC/26/16	Application for a Private Hire Driver Licence

3.     **RC/27/16**                     **Application for a Dual (Hackney Carriage and Private Hire) Driver Licence**
4.     **RC/28/16**                     **Review of Dual (Hackney Carriage and Private Hire) Driver Licence**

Contact: Helen Conway email: [Helenconway@gateshead.gov.uk](mailto:Helenconway@gateshead.gov.uk), Tel: 0191 433 3993,  
Date: Monday, 10 October 2016

## GATESHEAD METROPOLITAN BOROUGH COUNCIL

### REGULATORY COMMITTEE MEETING

Tuesday, 6 September 2016

**PRESENT:** Councillor K Dodds (Chair)

Councillor(s): W Dick, D Duggan, B Goldsworthy, J Graham, J Kielty, R Mullen, B Oliphant, M Ord, A Thompson and N Weatherley

**IN ATTENDANCE:** Councillor(s):

**APOLOGIES:** Councillor(s): C Bradley, M Charlton and D Davidson

**RC82 APOLOGIES**

**RC83 MINUTES**

RESOLVED - That the minutes of the last meeting be approved as a correct record.

**RC84 APPLICATION FOR STREET TRADING CONSENT**

RESOLVED - RC/16/16 That application for Street Trading Consent be refused.

**RC85 EXCLUSION OF THE PRESS AND PUBLIC**

RESOLVED - That the press and public be excluded from the meeting during the consideration of the remaining business in accordance with the indicated paragraph of Schedule 12A of the Local Government Act of 1972.

**RC86 SUMMARY OF DECISIONS FROM LAST COMMITTEE MEETING**

RESOLVED - That the summary of decisions from last committee be noted.

**RC87 HACKNEY CARRIAGE/PRIVATE HIRE DRIVER LICENCES**

RESOLVED -

- i) The Committee agreed to revoke the applicant's (RC/20/16) Dual (Hackney Carriage & Private Hire) Driver licence with immediate effect.
- ii) The Committee agreed not to grant a Private Hire licence (RC/21/16) to the applicant.

- iii) The Committee agreed to refuse the applicant's (RC/22/16) application for private hire driver licence.
- iv) The Committee agreed to refuse the applicant's (RC/23/16) application for a dual (Hackney Carriage and Private Hire) driver licence.

**RC88            SUSPENSIONS/REVOCATIONS UNDER DELEGATED POWERS**

RESOLVED -            That driver licence 004487 private hire driver licence be suspended from 2 September 2016.

**Chair.....**

**TITLE OF REPORT** - **Appeals and Prosecutions**

**REPORT OF** - **Mike Barker, Acting Chief Executive**

The Committee is requested to consider the attached report on licensing related appeals and prosecutions during the period 9 February 2016 to 17 October 2016.

### Appeals against Committee decisions

Appellant	Court	Date	Decision being appealed	Court's decision
Basharat Khan	Gateshead Magistrates' Court	31 October 2016	Revocation of Dual Licence (with immediate effect)	Pending
Trevor Richardson	Gateshead Magistrates' Court	31 October 2016	Refusal to grant Private Hire Driver licence	Pending
Maurice Pilcher	Gateshead Magistrates' Court	31 October 2016	Refusal to grant Dual (Hackney Carriage and Private Hire) Driver licence	Pending

### Prosecutions

Defendant	Court	Date	Offence	Result
n/a				

### Appeals against Court decisions

Defendant	Court	Date	Offence	Result
n/a				

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**TITLE OF REPORT - Licences, Permits and Registrations Issued**  
**REPORT OF - Paul Dowling, Strategic Director, Communities and Environment**

**Regulatory Committee**  
**18 October 2016**

The following number of taxi and private hire licences, were issued under delegated powers as at 1 October 2016

Type of Licence	Number Issued
Hackney Carriage Vehicle	257
Private Hire Vehicle	469
Licensed Drivers	719
Private Hire Operator	16
<b>TOTAL</b>	<b>1461</b>

There are a total of 9 pending driver applications that have been submitted to the Council but are incomplete due to the applicants being unable to comply with the Council's Policy in relation to making an application which states:-

**If an applicant has spent six continuous months or more living outside the United Kingdom Gateshead Council will expect to see evidence of a criminal record check from the country/countries covering the period before a licence application can be made. All applicants therefore are unable to comply with the Council Policy.**

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**TITLE OF REPORT:**           **Summaries of Regulatory Committee Decisions**

**REPORT OF:**                 **Mike Barker, Acting Chief Executive**

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## **Purpose of the Report**

1. To provide the Members of the Regulatory Committee with the Summaries of Decision in respect of the decisions made by the Committee on 6 September 2016.

## **Background**

2. Under the provisions of the Local Government (Miscellaneous Provisions) Act 1976 Gateshead Council is required, when it makes a decision regarding the suspension or revocation of an existing licence or the refusal of a new application, to give the individual notice of the decision itself and the grounds for the decision. Also, where a driver's licence is suspended or revoked with immediate effect, the Act requires the Council to give an explanation why this is the case.
3. In order to clearly and transparently set out the decisions taken by the Committee and the reasons for those decisions, a written Summary of Decision is produced and provided to the individual in question; and a copy retained on their file for future reference.
4. The Summaries of Decision are also made available to the Magistrates' Court in the event of any appeal so that the Magistrates understand why Members reached the decision they did.
5. The Summaries of Decision may also, where appropriate, be provided to the Disclosure & Barring Service in order that relevant information may be included in future enhanced criminal record checks relating to the individual.
6. Appended to this report are the Summaries of Decision in respect of the matters that were brought before the Regulatory Committee on the previous occasion.

## **Recommendations**

7. The Committee are requested to note the content of this report.

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**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Basharat Khan  
**Address:** 34 Saltwell View Gateshead NE8 4NT  
**For Determination :** Review of Dual (Hackney Carriage & Private Hire) Driver Licence  
**Date of Hearing:** 6 September 2016

**Reason for hearing**

Mr Khan appeared before the Council's Regulatory Committee on 6 September 2016 to consider whether he remained a 'fit and proper' person to be licensed as a Hackney Carriage and/or Private Hire Driver by this Council.

Mr Khan's fitness and propriety was called into question by his pattern of motoring related offences, breach of licence condition and dishonest conduct as set out in the Licensing Officer's report to the Committee.

**The Committee decided as follows :**

- (1) To revoke Mr Khan's Dual (Hackney Carriage & Private Hire) Driver licence; and
- (2) That the revocation of Mr Khan's licence shall have immediate effect.

**Reasons for decision**

Prior to the hearing, the Committee read the Licensing Officer's report referred to above.

Mr Khan attended the hearing and was accompanied by trainee solicitor Mr Clark of Messrs Lambert Taylor & Gregory.

Mr Khan confirmed that he had received the report prior to the hearing, that he had read and understood it, and that the information contained was accurate and complete in respect of his conduct relevant to the Committee's determination.

The Committee heard representations from Messrs Khan and Clark as set out below.

The Committee considered the Home Office / Department For Transport guidance and the Council's own policy in respect of the factors to be taken into account when determining whether a person is 'fit and proper' to hold a Hackney Carriage and/or Private Hire Driver licence, and noted in particular –

- the Home Office / Department For Transport Guidance states –
  - “Every case will be decided on its own merits”
  - “The overriding consideration should be the protection of the public”
  - “Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding, etc should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence then a hackney carriage or PHV licence may be granted after its restoration but a warning should be given as to future conduct. An isolated conviction for reckless driving or driving without due care and attention, etc, should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed”
  - “Dishonesty – Hackney Carriage and Private Hire Drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare, etc. Overseas visitors can be confused by the change in currency and become 'fair game' for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application”; and
- Gateshead Council's own Policy on the Relevance of Criminal Conduct states –
  - “The Regulatory Committee are required to look at any relevant indicators that may affect a person's suitability to hold a licence, and to consider the possible implications of granting such a licence to that person”
  - “‘Fit and proper person’ - Whether someone is a ‘fit and proper person’ to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind, for example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property. Some areas give rise to particular concern, including –
    - ‘Honesty and trustworthiness’ - drivers often have knowledge that a customer is leaving a house empty; they have opportunities to defraud drunken, vulnerable or foreign people or to steal property left in cars. They must not abuse their position of trust. For example, any passenger would expect to be charged the correct fare for a journey

and then be given the correct change; they would also expect a driver to hand in any article left by a passenger in a vehicle; and also to maintain confidentiality between driver and passenger; and

- 'A good and safe driver' – passengers paying for a transport service should rely on their driver to get them to their destination safely. Taxi and private hire drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence'
- "Compliance with conditions and requirements of Licensing Authority – the Regulatory Committee may take into account a person's history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record of complaints about them, also their compliance with licence conditions and their willingness to cooperate with the reasonable requests of licensing officers"
- "Driving offences – existing licence holders – Private hire and hackney carriage drivers are considered professional drivers and must be aware of the safety of their passengers and the safety of their vehicles at all times. Any traffic offences may show a lack of responsibility whilst driving either due to the maintenance and safety of their vehicle or in the manner of their driving. The Regulatory Committee should consider what weight to apply to any mitigating factors.
- "Dishonesty - Drivers of hackney carriage and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public, for example, by demanding more than the legal fare or giving incorrect change. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. Similarly, any customer can be defrauded by a driver taking them by any other than the shortest route or by them retaining any lost property left in their vehicle. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. For these reasons a serious view is taken of any offences involving dishonesty. A new application will normally be refused or an existing licence revoked where a person has committed [a dishonesty related] offence"
- "Patterns – a series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident. A serious view will be taken when applicants show a pattern of incidents. If for example, the applicant has received three or more convictions for violent action, then serious consideration should be made as to the suitability of that person holding a licence"
- "Once a licence has been granted – if a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence. A suspension or revocation of the licence of a driver takes effect at the end of the period of 21 days beginning

with the day on which notice is given to the driver. 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 includes a statement that this is so and an explanation why, the suspension or revocation takes effect when the notice is given to the driver”

- “Protecting the public’ – Licensed drivers play a vital role in helping to ensure that vulnerable people are kept safe. ‘Vulnerability’ in this context includes lone, drunk, disabled and foreign passengers as well as children. Passengers place their trust in the drivers of licensed taxis. Where that trust is abused, the consequences can be very serious and wide ranging.”
- “The overriding consideration for the Members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked –

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant / licence holder to satisfy the Regulatory Committee.”

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976, as follows –

- Section 51(1)(a) : “Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence : Provided that a district council shall not grant a licence— unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”; and
- Section 59(1)(a) : “Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”
- Section 61(1)(b) : “Notwithstanding anything in the Act of 1847 or this Part of this Act, a district council may suspend or revoke ... the licence of a driver of a hackney carriage or a private hire vehicle on ... any ... reasonable cause”
- Section 61(2A) : “Subject to subsection (2B) of this section, a suspension or revocation of the licence of a driver under this section takes effect at the end

of the period of 21 days beginning with the day on which notice is given to the driver under subsection (2)(a) of this section”

- 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 subsection (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”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 26 August 2016.

Mr Khan and his representative accepted that he had committed a number of speeding offences including two incidents where the speed was grossly in excess of the limit, but referred to the fact that the Council’s policy defines speeding offences as ‘minor’ to suggest that little weight should be attached to any concern they cause as to whether he is a good and safe driver.

Mr Khan stated that he was not driving a licensed vehicle on any of the occasions where he was caught speeding.

Mr Khan’s representative stated that there was nothing to suggest that Mr Khan had been driving dangerously or erratically whilst speeding. Mr Khan stated that his most recent speeding offence occurred in December 2015 during the Christmas period when the road was relatively quiet and the conditions were dry. He accepted, however, that driving at 40mph above the speed limit even in such conditions cannot be considered safe. Mr Khan stated that he was in a vehicle he was not familiar with and was not aware how fast he was driving. Mr Khan said that he has probably driven a further 10,000 miles on the same stretch of road since the incident and has not been caught speeding since, and invited the Committee to accept that he is now a good and safe driver.

Mr Khan was also asked to clarify the comments he made to the Court when he made a plea of exceptional hardship in order to avoid being disqualified from driving.

Mr Khan accepted that he has informed the Court that he is the only person that can test drive vehicles on behalf of his company, Webuyyourtaxi.com Ltd, and that if he was disqualified from driving then he would have to close the business resulting in several redundancies and his family being made homeless.

However, when Mr Khan was reminded that the other director and shareholder of the company, Mr Trevor Robinson, is also licensed as a Hackney Carriage and Private Hire Driver by Gateshead Council, Mr Khan accepted that he is not the only person who can or in fact does test drive vehicles on behalf of the company.

Mr Khan stated that what he meant by saying that he is ‘the only person who can test drive vehicles’ was that he is ‘better at test driving vehicles than Mr Robinson’, and that ‘nine times out of ten’ Mr Khan carries out the test drives.

The Committee were mindful that holding a Hackney Carriage and/or Private Hire Driver licence is a privilege and not a right, and that under the Local Government (Miscellaneous Provisions) Act 1976 as above, licensing authorities *must not* permit a person to be licensed unless they are *satisfied* that the person is fit and proper to hold that licence, so where on the balance of probabilities there is doubt as to a person's ability to properly provide those services they must not be licensed.

Having regard to the individual circumstances, the Committee found that they were no longer satisfied that Mr Khan is a fit and proper person to be licensed as either a Hackney Carriage and Private Hire Driver by this Council.

The Committee considered that Mr Khan's driving offences demonstrate that he is not a good and safe driver and that the pattern of offending shows an increasing disregard for the safety of himself and other road users. The Committee noted that Mr Khan has not been convicted of any further speeding offences since May 2016, but did not consider the passage of time to be sufficient to demonstrate a change of character.

The Committee also considered that Mr Khan had wilfully misled the Court in order to avoid a driving disqualification.

The Committee considered that Mr Khan had also attempted to mislead the Council, having maintained that he was the only person who could test drive vehicles on behalf of his company when he knew this to be false and misleading.

In the circumstances, the Committee found that it was no longer satisfied that Mr Khan is a suitably honest and trustworthy person in order to continue to hold a licence, and that his 'dual' Hackney Carriage and Private Hire Driver licence should be revoked.

The Committee found that its concern regarding Mr Khan's driving conduct and honesty were so serious that the interests of public safety require the revocation to take immediate effect.

The Committee noted that in reaching their decision they only had regard to such factors as are relevant to ensuring public safety and not by the impact that their decision may have on the individual's personal circumstances or livelihood.

### **Right of appeal**

If Mr Khan is aggrieved by the Committee's decision he has the right to appeal to Gateshead Magistrates' Court within 21 days of the decision. As Mr Khan was in attendance at the hearing and was duly notified of the decision at that time, any such appeal should be brought within 21 days of the hearing date.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
7 September 2016



**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Maurice Pilcher

**Address:** 75 Regent Court Gateshead NE8 1HB

**For Determination :** Application for Dual (Hackney Carriage and Private Hire)  
Driver Licence

**Date of Hearing:** 6 September 2016

**Reason for hearing**

Mr Pilcher appeared before the Council's Regulatory Committee on 6 September 2016 to consider whether he is a 'fit and proper' person to be licensed as a Hackney Carriage and/or Private Hire Driver by this Council.

Mr Pilcher's fitness and propriety was called into question by his pattern of violence related offences as set out in the Licensing Officer's report to the Committee.

**The Committee decided as follows :**

To refuse Mr Pilcher a Dual (Hackney Carriage & Private Hire) Driver licence.

**Reasons for decision**

Prior to the hearing, the Committee read the Licensing Officer's report referred to above.

Mr Pilcher attended the hearing and confirmed that he had received the report prior to the hearing, that he had read and understood it, and that the information contained was accurate and complete in respect of his conduct relevant to the Committee's determination.

The Committee heard representations from Mr Pilcher (who was accompanied by Mr Dave Kennedy of Central Taxis Gateshead Ltd which is a Private Hire Operator licensed by this Council), as set out below.

The Committee considered the Home Office / Department For Transport guidance and the Council's own policy in respect of the factors to be taken into account when determining

whether a person is 'fit and proper' to hold a Hackney Carriage and/or Private Hire Driver licence, and noted in particular –

- the Home Office / Department For Transport Guidance states –
  - “Every case will be decided on its own merits”
  - “The overriding consideration should be the protection of the public”
  - “Violence – As Hackney Carriage and PHV Drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least three years free of such conviction should be shown before an application is entertained and even then a strict warning should be administered”; and
- Gateshead Council’s own Policy on the Relevance of Criminal Conduct states –
  - “The Regulatory Committee are required to look at any relevant indicators that may affect a person’s suitability to hold a licence, and to consider the possible implications of granting such a licence to that person”
  - “‘Fit and proper person’ - Whether someone is a ‘fit and proper person’ to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind, for example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property”
  - “‘Not abusive’ – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands”
  - “Violence – As Hackney Carriage and Private Hire Drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where a conviction is less than 5 years prior to the date of application:

- Assault occasioning actual bodily harm
- Common assault

The above guidelines are applicable to new applicants and existing licence holders who have committed one offence. If a new applicant or existing licence holder has committed two or more violence related offences, the licence should normally be revoked or refused.”

- “Patterns – A series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident.”

- “Protecting the public’ – Licensed drivers play a vital role in helping to ensure that vulnerable people are kept safe. ‘Vulnerability’ in this context includes lone, drunk, disabled and foreign passengers as well as children. Passengers place their trust in the drivers of licensed taxis. Where that trust is abused, the consequences can be very serious and wide ranging.”
- “The overriding consideration for the Members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked –

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant / licence holder to satisfy the Regulatory Committee.”

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976, as follows –

- Section 51(1)(a) : “Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence : Provided that a district council shall not grant a licence— unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”; and
- Section 59(1)(a) : “Notwithstanding anything in the Act of 1847, a district council shall not grant a licence to drive a hackney carriage unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 26 August 2016.

Mr Pilcher accepted that he had acted inappropriately when he had been violent towards his children, but invited the Committee to find him to be a fit and proper person in light of the fact that the convictions relate to domestic incidents during a period of his relationship breaking down, and as such were out of character.

Ms Debbie Wilkinson, who is the Council's team manager for safeguarding and care planning, was in attendance and advised the Committee that the council's Family Intervention Team became involved with Mr Pilcher following the incident in 2013; and again following the incident in 2015. Ms Wilkinson stated that whilst there is an ongoing child protection plan, no restrictions have been placed on Mr Pilcher's contact with his children.

The Committee were mindful that holding a Hackney Carriage and/or Private Hire Driver licence is a privilege and not a right, and that under the Local Government (Miscellaneous Provisions) Act 1976 as above, licensing authorities *must not* permit a person to be licensed unless they are *satisfied* that the person is fit and proper to hold that licence, so where on the balance of probabilities there is doubt as to a person's ability to properly provide those services they must not be licensed.

Having regard to the individual circumstances, the Committee found that they were not satisfied that Mr Pilcher is a fit and proper person to be licensed as either a Hackney Carriage and Private Hire Driver by this Council.

The Committee were mindful of the realities of the profession, where drivers are often the subject of unwarranted abuse from members of the public, and considered that the pattern of violent conduct demonstrated by Mr Pilcher gave concern as to whether he would act appropriately in such situations.

The Committee did not consider that the individual circumstances justified deviation from the Council's policy, and that Mr Pilcher's application should accordingly be refused.

In making this decision, the Committee were mindful that the repetition of unacceptable conduct indicates a propensity for wrongdoing that should generally cause greater concern about the person's likely future conduct.

The Committee noted that in reaching their decision they only had regard to such factors as are relevant to ensuring public safety and not by the impact that their decision may have on the individual's personal circumstances or livelihood.

### **Right of appeal**

If Mr Pilcher is aggrieved by the Committee's decision in this respect he has the right to appeal to Gateshead Magistrates' Court within 21 days of the decision. As Mr Pilcher was in attendance at the hearing and was duly notified of the decision at that time, any such appeal should be brought within 21 days of the hearing date.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
7 September 2016

**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Paul Holt  
**Address:** 36 Wylam Road Stanley DH9 0EN  
**For Determination :** Application for Private Hire Driver Licence  
**Date of Hearing:** 6 September 2016

**Reason for hearing**

Mr Holt appeared before the Council's Regulatory Committee on 6 September 2016 to consider whether he is a 'fit and proper' person to be licensed as a Private Hire Driver by this Council.

Mr Holt's fitness and propriety was called into question by his pattern of driving related offences as set out in the Licensing Officer's report to the Committee.

**The Committee decided as follows :**

To refuse Mr Holt a Private Hire Driver licence.

**Reasons for decision**

Prior to the hearing, the Committee read the Licensing Officer's report referred to above.

Mr Holt attended the hearing and confirmed that he had received the report prior to the hearing, that he had read and understood it, and that the information contained was accurate and complete in respect of his conduct relevant to the Committee's determination.

The Committee heard representations from Mr Holt as set out below.

The Committee considered the Home Office / Department For Transport guidance and the Council's own policy in respect of the factors to be taken into account when determining whether a person is 'fit and proper' to hold a Hackney Carriage and/or Private Hire Driver licence, and noted in particular –

- the Home Office / Department For Transport Guidance states –

- “Every case will be decided on its own merits”
- “The overriding consideration should be the protection of the public”
- “Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding, etc should not prevent a person from proceeding with an application. If sufficient points have been accrued to require a period of disqualification of the applicant’s driving licence then a hackney carriage or PHV licence may be granted after its restoration but a warning should be issued as to future conduct. An isolated conviction for reckless driving or driving without due care and attention etc should normally merit a warning as to future driving and advice on the standard expected of hackney carriage and PHV drivers. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed”; and
- Gateshead Council’s own Policy on the Relevance of Criminal Conduct states –
  - “The Regulatory Committee are required to look at any relevant indicators that may affect a person’s suitability to hold a licence, and to consider the possible implications of granting such a licence to that person”
  - “‘Fit and proper person’ - Whether someone is a ‘fit and proper person’ to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind, for example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property”
  - “Patterns – a series of incidents of criminal conduct over a period of time is more likely to give cause for concern than an isolated incident”
  - “‘A good and safe driver’ – passengers paying for a transport service rely on their driver to get them to their destination safely. Taxi and private hire drivers are expected to be professional drivers and should be fully aware of all Road Traffic legislation and conditions attached to the licence”
  - “Compliance with conditions and requirements of Licensing Authority – the regulatory Committee may take into account a person’s history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, in deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as the record or complaints about the, also their compliance with licence conditions and their willingness to cooperate with the reasonable requests of Licensing Officers”
  - “Driving offences – new applicants – if a significant history of offences is disclosed, an application may be refused”
  - “‘Protecting the public’ – Licensed drivers play a vital role in helping to ensure that vulnerable people are kept safe. ‘Vulnerability’ in this context

includes lone, drunk, disabled and foreign passengers as well as children. Passengers place their trust in the drivers of licensed taxis. Where that trust is abused, the consequences can be very serious and wide ranging.”

- “The overriding consideration for the Members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked –

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant / licence holder to satisfy the Regulatory Committee.”

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976, as follows –

- Section 51(1)(a) : “Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence : Provided that a district council shall not grant a licence— unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 26 August 2016.

Mr Holt accepted that he had a pattern of unacceptable conduct whilst driving, but stated that on each occasion where he was caught speeding he had only been a few mph over the speed limit; and that since being caught driving using his mobile phone he no longer does this.

In respect of the offences that led to his most recent period of disqualification, Mr Holt stated that in the first instance he was travelling on the A1 at 38mph in a 30mph zone; and in the second instance he was travelling back down the A1 at 44mph in the same 30mph zone; and that he had mistakenly believed –

- (a) That the speed limit was 40mph

- (b) That the speed cameras calculated his average speed between two points
- (c) That in these circumstances he would not be convicted of speeding if his average speed was 40mph or less even if he was actually recorded driving at a speed in excess of 40mph
- (d) That the average of 38mph and 44mph is 40mph or less, rather than 42mph

The Committee were mindful that holding a Private Hire Driver licence is a privilege and not a right, and that under the Local Government (Miscellaneous Provisions) Act 1976 as above, licensing authorities *must not* permit a person to be licensed unless they are *satisfied* that the person is fit and proper to hold that licence, so where on the balance of probabilities there is doubt as to a person's ability to properly provide those services they must not be licensed.

Having regard to the individual circumstances, the Committee found that they were not satisfied that Mr Holt is a fit and proper person to be licensed as a Private Hire Driver by this Council.

The Committee were seriously concerned by the pattern of motoring offences which has been ongoing for a number of years, including a major offence in 2014 and an accumulation of points sufficient to be disqualified from driving. The Committee were also seriously concerned by Mr Holt's pattern of failing to notify the Council of points on his licence and his disqualification when he was licensed as a Private Hire Driver and was therefore in breach of the conditions of his licence. Mr Holt's disregard of his licence conditions led the Committee to conclude that if Mr Holt were issued with a licence it is likely he would again fail to comply with its requirements.

The Committee noted that in reaching their decision they only had regard to such factors as are relevant to ensuring public safety and not by the impact that their decision may have on the individual's personal circumstances or livelihood.

### **Right of appeal**

If Mr Holt is aggrieved by the Committee's decision in this respect he has the right to appeal to Gateshead Magistrates' Court within 21 days of the decision. As Mr Holt was in attendance at the hearing and was duly notified of the decision at that time, any such appeal should be brought within 21 days of the hearing date.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
7 September 2016



**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Ms Rosalyn Myers  
**Address:** 77 Burnopfield Road Rowlands Gill Gateshead NE39 1QQ  
**For Determination :** Application for Street Trading Consent  
**Date of Hearings:** 9 August 2016 & 6 September 2016

**Reason for hearing**

Ms Myers first appeared before the Council's Regulatory Committee on 9 August 2016 to consider whether to grant her a Street Trading Consent under Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982 in respect of a proposed site located at Sterling Lane Car Park in Rowlands Gill.

Objections to the grant of the Street Trading Consent had been received from Councillor Caffrey and from the Director of Public Health, as set out in the Licensing Officer's report dated 1 August 2016.

In accordance with Part 6 of Gateshead Council's Street trading and Markets Policy & Guidance issued December 2015, the Licensing Manager had duly considered Ms Myers's application and the objections received from Councillor Caffrey and the Director of Public Health, and was not satisfied that the Street Trading Consent should be granted.

As such, the Licensing Manager notified Ms Myers of the intention to refuse the application, together with a copy of the Senior Licensing Officer's report setting out the grounds for concern as above.

Ms Myers then requested that the application be referred to the Council's Regulatory Committee.

A hearing took place on 9 August 2016, but was adjourned in order that Members could conduct a site visit prior to making their decision. The site visit took place on 19 August 2016, and the adjourned hearing took place on 6 September 2016.

## **The Committee decided as follows :**

Not to grant the requested consent.

### **Reasons for decision**

Prior to the initial hearing, the Committee read the Licensing Officer's report referred to above.

At that hearing Ms Myers confirmed that she had received the report prior to the hearing, that she had read and understood it, and that the information contained was accurate and complete in respect of matters relevant to the Committee's determination, save that –

- The menus set out on pages 32 – 35 are no longer intended to be used and are replaced in the application by the menu attached to this summary of decision; and
- The meals shown in the photographs on pages 29 – 31 of the report are no longer intended to be served from the catering van.

The Committee heard representations from Ms Myers (who was accompanied by Ms Chilvers), and from Paul Gray who is Public Health Programme Lead Officer for Gateshead Council, as set out below.

The Committee considered the following provisions of the Council's Street Trading & Markets Policy and Guidance –

- The Council will only permit street trading and markets if the following objectives are promoted:
  - *Preserving or enhancing the character of the area*  
An applicant should be sensitive to the character of the area in which they propose to trade. This may include the number of existing outlets (whether fixed or mobile) selling similar articles in the vicinity. It may also include consideration as to whether the area is appropriate for the proposed activities, in particular with regard to conservation areas and 'feature areas'.
  - *Promoting health and wellbeing*  
An applicant should ensure that the health and wellbeing of residents and visitors is considered including the healthiness of the products sold and community interaction arising.
  - *Promoting economic prosperity*  
An applicant should ensure that vitality and vibrant activity is created or enhanced within Gateshead by improving and/or diversifying the shopping offer and experience within Gateshead, contributing to a competitive economy, and enhancing the independent retail offer including the provision of quality products.
  - *Animating streets and spaces*  
An applicant should ensure that in appropriate locations that their offer can help animate streets and spaces, encourage footfall, dwell time, and spend in an area.

- *Promotion of Public Safety*  
An applicant should ensure that public safety is not threatened by their business activities and be able to demonstrate that their business does not present a danger to members of the public, including customers. Particular regard will be given to road safety, the potential for disorder and to avoiding the possibility of creating an obstruction, fire risk, unsafe practices or anti-social behaviour.
- *Prevention of Public Nuisance*  
An applicant should ensure that their activities do not result in a danger or nuisance, particularly to residents and businesses near their site. 'Nuisance' can include littering, noise, smells, etc.
- *Promoting compliance with relevant legislation*  
An applicant should be aware of all relevant legislation (Health & Safety, Food Hygiene, Highways/Road Traffic Act) and should ensure and be able to demonstrate that their business complies with all legal requirements that affect their activities.
- The suitability of goods to be sold will be determined on a case by case basis. The Council will be mindful of and take account of all relevant matters, including local shopping needs, diversity, balance and conflict with nearby commercial shops and street trading
- Along with the street trading and markets objectives, the following questions (which may involve a site assessment) will be assessed:
  - *Highway safety*  
Is the siting of the street trading likely to have an adverse effect on road safety, either as a result of the siting itself or from customers arriving, attending and/or leaving the site?
  - *Parking*  
Is there adequate parking available to staff and customers?
  - *Obstruction*  
Will the siting cause an obstruction to pedestrians or road users?
  - *Sight lines*  
Will the siting interfere with the line of sight of pedestrians or road users?
  - *Loss of amenity*  
Will there be a significant loss of amenity in the vicinity from the new siting?
  - *Lighting*  
If it is proposed that the activities will take place at night, is the siting adequately lit?
  - *Relevant Restrictions*  
Are there any relevant restrictions that would prevent the Consent being exercised at certain times or on certain dates, e.g. parking or waiting restrictions, or conflicting market rights?

- *Cart/barrow*  
Is the cart, barrow, etc adequate for street trading activities, having regard to the siting, and the nature of the vehicle?
  - *Other*  
There may be other issues relevant to the individual site.
- Where all the considerations above have been satisfied, consent may be given.
  - Where the applicant has proposed dispensation and/or variance from the standard conditions but the Licensing Manager is not satisfied that the Consent may be granted with any or all of those dispensation(s) and/or variation(s) then the Licensing Manager may grant the Consent subject instead to the standard conditions.
  - If however the Licensing Manager is not satisfied that the Consent may be granted, then the Licensing Manager will send the applicant a notice of intention to refuse their application, together with a copy of the Senior Licensing Officer's report setting out the grounds for concern.
  - If the Applicant wishes to appeal the decision of the Licensing Manager to refuse the application s/he can have the matter considered by the Council's Regulatory Committee. However, the applicant cannot trade during the appeal period. The Regulatory Committee will consider a report from the Licensing Manager setting out his/her reasons for refusing the application and the Committee will also invite the applicant and objector(s) to provide further evidence. After considering the evidence the Regulatory Committee may:
    - Uphold the Licensing Manager's decision (i.e. refuse the application)
    - Adjourn the hearing if it deems further enquiries are necessary in order to make a fully informed decision; or
    - Grant the application and, if appropriate, add or vary the conditions to be attached to the Consent.
  - In deciding whether or not to grant the application the Regulatory Committee will only have regard to such factors as are relevant to ensuring the street trading and markets objectives are not compromised. The Regulatory Committee therefore cannot have regard to the impact that their decision may have on the applicant's livelihood.
  - The Regulatory Committee may decide to impose conditions as sought by the applicant/Consent Holder or any other conditions they see fit. Any conditions imposed will be proportionate to the circumstances they are intended to address and will ensure that they are:
    - Relevant to the applicant/Consent Holder and the (proposed) street trading activity

- Fairly and reasonably related to the scale and type of (proposed) street trading activity; and
- Reasonable in all other respects.
- Conditions will not be imposed if:
  - Complying with the condition(s) would mean it is impossible to comply with any statutory requirements.
  - They do not relate to the activity of street trading.
  - They unduly interfere with the applicant/Consent Holder's right to lawfully run their business as they see fit.
- Duplication with other statutory or regulatory regimes will be avoided as far as possible. Each case will be assessed on its own individual merits.

The Committee had due regard to the following matters:

### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1982, as follows –

#### “Section 7

- (1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.
- (2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.
- (3) A street trading consent shall not be granted—
  - (a) to a person under the age of 17 years; or
  - (b) for any trading in a highway to which a control order under section 7 of the Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.
- (4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.
- (5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent—
  - (a) obstruction of the street or danger to persons using it; or

- (b) nuisance or annoyance (whether to persons using the street or otherwise).
- (6) ...
- (7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.
- (8) The council may include in a street trading consent permission for its holder to trade in a consent street—
  - (a) from a stationary van, cart, barrow or other vehicle; or
  - (b) from a portable stall.
- (9) If they include such a permission, they may make the consent subject to conditions—
  - (a) as to where the holder of the street trading consent may trade by virtue of the permission; and
  - (b) as to the times between which or periods for which he may so trade.
- (10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.
- (11) ...”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

#### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 1 August 2016.

Ms Myers advised that separate to the process for obtaining a Street trading Consent, she has obtained agreement from the Council for use the land that she proposes to locate the catering van on, and for the provision of waste services. Ms Myers confirmed that she understood that the Council’s agreement in this respect is separate to the process of obtaining a Street Trading Consent, and the decisions in respect of each of those authorisations are made on distinct criteria.

Ms Myers said that she has spoken to a number of people who may potentially frequent her catering van if Street trading Consent is granted, and that she believes the location to be appropriate due to the lack of other available refreshment in the immediate vicinity, particularly given that the car park is located close to the Derwent Walk which is well used by walkers and cyclists who may not wish to deviate from their route in order to go into the centre of the village.

Ms Myers emphasised that she is cognisant of the rural location of the proposed site, and that she has decorated the catering van in order to ensure its appearance is befitting of the location.

Mr Gray confirmed that the Director of Public Health had objected to Ms Myers's application on the basis that it appeared from the information initially provided gave concern as to the nature of the proposed trading, which were raised with Ms Myers who subsequently provided inconsistent and incomplete information as the nature of her proposed activity changed. Mr Gray said that a meeting took place on 4 August 2016 to seek clarity as to what Ms Myers intended to sell and how she intended to promote the health and wellbeing objective. Mr Gray said that Ms Myers had agreed to price her food appropriately to avoid over-consumption, and as such would no longer provide the 'small' and 'monster' breakfast options set out in the initial menu.

Mr Gray said that following the discussions on 4 August 2016 the Director of Public Health came to the view that Ms Myers had considered how she could enable customers to make healthy choices, and the nutritional quality of the food she intends to serve, which would be targeted at people with healthy lifestyles. On that basis, Mr Gray advised that the Director of Public Health would be prepared to lift her objection subject to the understanding that if Ms Myers were minded to change her menu in such a way as to reduce the nutritional quality of the food, encourage over-consumption or reduce healthy choices, this would result in a review of the consent if granted.

The Licensing Officer confirmed that the issues raised by Councillor Caffrey regarding the suitability of the proposed location in terms of preserving or enhancing the character of the area remained a concern for the Committee's deliberation.

Ms Myers stated that the Council had agreed to provide an additional bin in the car park, and to carry out daily waste collections; and that she would collect any rubbish from the car park each evening and bag it up and place it next to the Council bin for collection.

Ms Myers stated that in the summer she may wish to place a small table and chairs next to the catering van for customer use. Mr Bradley, who is the Assistant Manager of Compliance and Monitoring in the Council's Development, Public Protection and Transport Strategy Service within the Communities & Environment Strategic Group, advised that this would be unlikely to require formal approval by the Council as the proposed land is not adopted highway.

Ms Myers advised that she would move the catering van every evening, and that it is presently being kept on a friend's drive but would in the future be kept at her son's nearby lock up.

Ms Myers stated that the time when the car park is usually at its busiest is when there are events at the nearby Gibside National Trust property.

The Members of the Committee determined to adjourn their decision to enable a site visit to take place, in order that they may gain a fuller appreciation of the nature of the proposed site and the potential impact that the proposed trading may have.

The Members of the Committee then made a visit to the site of the proposed street trading on 19 August 2016.

Ms Myers was in attendance and had positioned the proposed catering van on the verge where she intended to trade from, in order that Members could assess the site as it would be if consent was granted.

It was confirmed to Ms Myers that only those Members who were in attendance at the Committee hearing on 9 August 2016 and also at the site visit will take part in the decision making, as those Members have had opportunity to take account of all relevant information.

Gavin Milne who is the Council's Technical Supervisor for Waste Services, Grounds Maintenance and Fleet Management was in attendance to answer questions regarding the car park and waste management arrangements.

John Bradley, Rebecca Sparrow, Helen Conway and Tim Briton were also in attendance continuing on from the Committee hearing on 9 August 2016.

Ms Myers advised that she has obtained a number of signatures on a petition in support of the proposed street trading activity. Whilst Members were on site, a passing cyclist also stated that they were in support of the proposed trading.

Mr Milne advised that the Council has considered whether it would be appropriate to relocate a bin to the car park area if the proposed trading were approved; however there has been no agreement to provide additional bins at the Council's expense or to provide waste collection services in respect of the catering van, which would be a commercial service and would therefore require a contract with the Council or another service provider.

The Members of the Committee viewed the proposed site from the car park itself, and from Stirling Road and the Derwent Walk.

The Members also viewed the nearby premises that also offer refreshments, i.e. the sandwich shop, café, supermarket and chip shop on Station Road, and the park shop in Derwent Park.

The adjourned hearing then recommenced on 6 September 2016, when Ms Chilvers was in attendance to represent Ms Myers however Ms Myers was not herself in attendance.

It was reconfirmed that only those Members who had been in attendance at both hearings and at the site visit would take part in the determination; and all other Members of the Committee then left the room while the matter was determined.

Ms Chilvers provided a petition and invited the Members to take it into consideration as showing support for the proposed street trading. Members were advised that the petition comprised of six pages, four of which were headed –

‘Catering Trailer (Sterling Road Car Park) – We the undersigned are concerned citizens who urge our leaders to act now to allow Momas Kitchen catering trailer to trade from above car park’

Members were advised that those pages contained a total of 35 signatures dated between 13 and 22 August 2016, from individuals at 28 different addresses.



Members were advised that the petition document does not provide any detail on the nature of the proposed street trading, for instance the times when it would be open or the type of catering that would be provided from it; and that it was apparent that this information had either not been provided to or fully understood by at least one of the signatories who added the comment, "Could do with a cold ice cream"; however the Applicant has not sought permission to sell ice creams.

Members were advised that the other two pages of the petition had no heading, so it was unclear from the face of the documents what the intention of the signatories was.

Members were advised that in the circumstances, whilst weight could potentially be given to the 35 signatures, no weight should be attached to the signatures on the other two pages.

It was confirmed that the Director of Public Health's objection had been withdrawn so the question of whether the proposed street trading would adequately promote the objective of promoting health and wellbeing was no longer a consideration.

As such, the Committee considered whether the proposed street trading would adequately promote the preservation or enhancement of the character of the area.

The Committee determined that the car park is in a distinctly rural setting, being adjacent to and serving users of the Derwent Walk which is a footpath / cycleway/ bridle path following the track bed of the former Derwent Valley Railway. The Derwent Walk is notable for its lack of commercial activity, which the Committee considered to be part of the area's distinctive character. The Committee determined that granting this consent would adversely affect rather than enhance the rural and non-commercial character of the area.

The Committee also noted the availability of catering of a similar nature in the nearby village, and considered that granting the application could have a detrimental effect on the objective of animating the street scene, by reducing the footfall, dwell time, and spend in the village from walkers, cyclists, etc who currently deviate from the Derwent Walk into the village.

The Committee noted that their decision would be the same regardless of whether weight was attached to the petition produced by the Applicant, and in the circumstances did not find it necessary or appropriate to attach weight to it.

### **No right of appeal**

There is no statutory right of appeal under the provisions of Schedule 4 of the Local Government (Miscellaneous Provisions) Act 1982.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
8 September 2016

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**GATESHEAD COUNCIL  
REGULATORY COMMITTEE**

**SUMMARY OF DECISION**

**Name of Licensee:** Trevor Richardson  
**Address:** 2 St Patricks Walk Gateshead NE10 9HF  
**For Determination :** Application for Private Hire Driver Licence  
**Date of Hearing:** 6 September 2016

**Reason for hearing**

Mr Richardson appeared before the Council's Regulatory Committee on 6 September 2016 to consider whether he is a 'fit and proper' person to be licensed as a Private Hire Driver by this Council.

Mr Richardson's fitness and propriety was called into question by his violent conduct and failure to comply with conditions when previously licensed as a Private Hire Driver by this Council, as set out in the Licensing Officer's report to the Committee.

**The Committee decided as follows :**

Not to grant a Private Hire Driver licence to Mr Richardson.

**Reasons for decision**

Prior to the hearing, the Committee read the Licensing Officer's report referred to above.

Mr Richardson attended the hearing and confirmed that he had received the report prior to the hearing, that he had read and understood it, and that the information contained was accurate and complete in respect of his conduct relevant to the Committee's determination.

The Committee heard representations from Mr Richardson (who was accompanied by Mr Steve Orrock of 'Marriage Carriage'), as set out below.

The Committee considered the Home Office / Department For Transport guidance and the Council's own policy in respect of the factors to be taken into account when determining whether a person is 'fit and proper' to hold a Hackney Carriage and/or Private Hire Driver licence, and noted in particular –

- the Home Office / Department For Transport Guidance states –
  - “Every case will be decided on its own merits”
  - “The overriding consideration should be the protection of the public”
  - “Violence – As Hackney Carriage and PHV Drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least three years free of such conviction should be shown before an application is entertained and even then a strict warning should be administered”; and
- Gateshead Council’s own Policy on the Relevance of Criminal Conduct states –
  - “The Regulatory Committee are required to look at any relevant indicators that may affect a person’s suitability to hold a licence, and to consider the possible implications of granting such a licence to that person”
  - “‘Fit and proper person’ - Whether someone is a ‘fit and proper person’ to hold a licence is ultimately a matter of common sense. When considering whether someone should serve the public, the range of passengers that a driver may carry should be borne in mind, for example elderly people, unaccompanied children, the disabled, those who have had too much to drink, lone women, foreign visitors and unaccompanied property”
  - “‘Not abusive’ – drivers are often subject to unpleasant or dishonest behaviour. The Council does not consider that this excuses any aggressive or abusive conduct on the part of the driver. Drivers are expected to avoid confrontation, and to address disputes through the proper legal channels. In no circumstances should they take the law into their own hands”
  - “Violence – As Hackney Carriage and Private Hire Drivers maintain close contact with the public, any previous convictions and/or cautions for violence will be taken seriously by the Regulatory Committee.

An application should be refused or existing licence revoked where the applicant has a conviction for one of the following offences and where a conviction is less than 5 years prior to the date of application:

- Common Assault

The above guidelines are applicable to new applicants and existing licence holders who have committed one offence. If a new applicant or existing licence holder has committed two or more violence related offences, the licence should normally be revoked or refused.”

- “Compliance with conditions and requirements of Licensing Authority – the Regulatory Committee may take into account a person’s history whilst holding a licence, from this or any other authority. The Regulatory Committee may take into account, when deciding whether a person is a fit and proper person to hold (or to continue to hold) a licence, such matters as

the record of complaints about them, also their compliance with licence conditions and their willingness to cooperate with the reasonable requests of licensing officers”

- “Protecting the public’ – Licensed drivers play a vital role in helping to ensure that vulnerable people are kept safe. ‘Vulnerability’ in this context includes lone, drunk, disabled and foreign passengers as well as children. Passengers place their trust in the drivers of licensed taxis. Where that trust is abused, the consequences can be very serious and wide ranging.”
- “The overriding consideration for the Members of the Regulatory Committee is to protect the public. Having considered and applied the appropriate guidelines, the following question should be asked –

“Would I allow my daughter or son, granddaughter or grandson, spouse, mother or father, or any person I care for or any vulnerable person I know, to get into a vehicle with this person alone?”

If the answer is yes, then a licence should normally be approved. If the Regulatory Committee has any doubts, then the licence must be refused, suspended or revoked. It is the responsibility of the applicant / licence holder to satisfy the Regulatory Committee.”

The Committee had due regard to the following matters:

#### Legislation

The Committee had regard to the relevant provisions of the Local Government (Miscellaneous Provisions) Act 1976, as follows –

- Section 51(1)(a) : “Subject to the provisions of this Part of this Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver’s licence : Provided that a district council shall not grant a licence— unless they are satisfied that the applicant is a fit and proper person to hold a driver’s licence”

The Committee also had regard to the Applicant’s right to a fair hearing pursuant to the Human Rights Act 1998.

#### Individual circumstances

The Committee had regard to the information contained in the Licensing Officer’s Report dated 26 August 2016.

Mr Richardson accepted that albeit he does not have a conviction for assaulting passengers in 2015 the incident did occur and he accepted that this was unacceptable behaviour. However, Mr Richardson invited the Committee to take assurance from the fact that there has only been one such incident in the time he has been licensed, that this was an isolated incident and that there should be little likelihood of a similar incident in the future.

Mr Richardson's representative questioned the accuracy and honesty of the passengers that were assaulted by Mr Richardson. The Committee, however, disregarded these comments in light of Mr Richardson's admission of his unacceptable conduct.

With regard to the speeding offence that Mr Richardson failed to declare to the Council in accordance with his licence conditions, Mr Richardson's representative stated that Mr Richardson had received a late booking and was trying to get the customer to their destination on time so drove in excess of the speed limit. No explanation was given in respect of the failure to notify the Council.

The Committee were mindful that holding a Private Hire Driver licence is a privilege and not a right, and that under the Local Government (Miscellaneous Provisions) Act 1976 as above, licensing authorities *must not* permit a person to be licensed unless they are *satisfied* that the person is fit and proper to hold that licence, so where on the balance of probabilities there is doubt as to a person's ability to properly provide those services they must not be licensed.

Having regard to the individual circumstances, the Committee found that they were not satisfied that Mr Richardson is a fit and proper person to be licensed as a Private Hire Driver by this Council.

The Committee considered that whilst Mr Richardson's appeal against conviction may have been allowed by the Crown Court there was no doubt that Mr Richardson had assaulted his passengers and that such action was entirely unacceptable. The Committee considered that insufficient time had passed since Mr Richardson's assault on his passengers to demonstrate a change of character such as to assure the Committee that such incident would not occur again if Mr Richardson were confronted with similarly antagonistic passengers; and that in the circumstances there were no compelling reasons to justify deviating from the Council's policy.

The Committee noted that in reaching their decision they only had regard to such factors as are relevant to ensuring public safety and not by the impact that their decision may have on the individual's personal circumstances or livelihood.

### **Right of appeal**

If Mr Richardson is aggrieved by the Committee's decision in this respect he has the right to appeal to Gateshead Magistrates' Court within 21 days of the decision. As Mr Richardson was in attendance at the hearing and was duly notified of the decision at that time, any such appeal should be brought within 21 days of the hearing date.

Gary Callum  
Licensing Officer  
Development, Public Protection & Transport Strategy  
7 September 2016

By virtue of paragraph(s) 7 of Part 1 of Schedule 12A  
of the Local Government Act 1972.

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