

Report to: Licensing committee

Item

3 December 2015

Report of: Head of citywide services

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Subject: Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976 – Case of Exeter City Council vs Sandle – licence renewals

Purpose

To inform member of the outcome of the above court case and consider the introduction of a late renewals policy.

Recommendation

That members note the court's decision and consider adopting the following policy regarding the late renewal of licences with a stated end date:

- (1) applications to renew a licence will be accepted up to 3 working days after the expiry of the previous licence;
- (2) in exceptional circumstances, a period of more than 3 days may be considered; Details of such circumstances must be submitted in writing to the licensing manager;
- (3) decisions regarding the late renewal of licences shall be delegated to the licensing manager.

Corporate and service priorities

The report helps to meet the corporate priority of a safe and clean city and the service plan priority of protecting the interests of the public through the administration of the licensing function.

Financial implications

None

Ward/s: All wards

Cabinet member: Councillor Driver - Neighbourhoods and community safety

Contact officers

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Background documents

None

Background

1. In May 2011 an appeal case was heard in the High Court relating to the late renewal of a hackney carriage vehicle licence.
2. The case related to a previous successful appeal by Mr Nicholas Sandle against the decision of Exeter City Council not to renew a hackney carriage licence after the previous licence had expired. A copy of the full decision is attached at Appendix A.

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3. All hackney carriage and private hire, vehicle and driver licences are issued for a fixed amount of time, with a specific expiry date. This also applies to certain other licences issued by Norwich city council under other legislation, such as tables and Chairs licences issued under the Highways Act 1980.
4. Prior to the above case it was generally held that after the expiry date, any such licence ceased to exist, and therefore any application to renew a licence received after the expiry of the old one, would not be entertained.
5. Previously, where an application was received to renew a licence, after the old one had expired, Norwich city council would have rejected that application and the applicant would have been advised that an application for the grant of a new licence would need to be made.
6. The case above, heard by the High Court, related to a situation where the person that was to make the application to renew a hackney carriage vehicle licence was unable to do so until the day after the previous licence expired, due to looking after a sick child.
7. Exeter city council refused the renewal application as the previous licence had expired, and this matter was appealed first to Exeter Crown Court and then to the High Court.
8. The decision of the High Court Judge in this case, in summary, was that where a renewal application is received after expiry of the previous licence, a delay of 2-3 days is acceptable before a decision is made (para. 11) and that "... it would only be in exceptional circumstances that a delay of more than a few days would be permissible" (para 12(2))

Summary

9. In light of the decision in this case, the current policy of not entertaining licence renewal applications, would appear to require updating.
10. Although this case refers to a hackney carriage vehicle licence, the judgement turns on the definition of "renew", and therefore it can be reasonably be applied to other licences, either within the same field or outside it, where licence holders are required to make an application to renew a licence that expires after a specific time or on a specific date.

CO/9149/2010

Neutral Citation Number: [2011] EWHC 1403 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Monday, 16 May 2011

B e f o r e:

MR JUSTICE COLLINS

Between:

THE QUEEN ON THE APPLICATION OF EXETER CITY COUNCIL_
Claimant

v

SANDLE_

Defendant

Computer-Aided Transcript of the Stenograph Notes of
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(Official Shorthand Writers to the Court)

Mr J Ticehurst (instructed by Exeter City Council) appeared on behalf of the **Claimant**

J U D G M E N T
(As Approved by the Court)

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1. MR JUSTICE COLLINS: This is an appeal by way of case stated from a decision of the Crown Court at Exeter given on 1st October 2009 on an appeal by one Nicholas Sandle against the decision of the Exeter City Council (the appellant in this case) to decline to grant a Hackney Carriage Licence following the expiry of his existing licence.
2. The court decided that notwithstanding that the licence had expired when the application for its renewal was made, it was capable within the meaning of the legislation of being renewed and it ought to have been renewed. However, in addition the court had decided that a fresh licence should have been in the circumstances granted. The appellant council does not challenge that decision. Accordingly, this appeal in so far as Mr Sandle is concerned is academic because he has the licence which he wished for. But it is of some importance to the Appellant Council because I am told that it, and indeed a considerable number of licensing authorities, have taken the view that the terms of section 43 of the Town Police Clauses Act 1847 prevent a renewal because they limit the licence granted to a period of 12 months.
3. The statutory provision in question, section 43, reads as follows. Under the heading "Licence to be enforced for one year only":

"Every licence so to be granted shall be under the common seal of the commissioners, if incorporated, or, if not incorporated, shall be signed by two or more of the commissioners..."

Perhaps that in itself is not particularly material now:

"... and shall not include more than one carriage so licensed, and shall be in force for one year only from the day of the date of such licence, or until the next general licensing meeting, in case any general licensing day be appointed by the commissioners."

In reality nowadays, as I understand it, the local authorities will normally act on the basis of the licence being valid for one year only within the terms of section 43.

4. It is to be noted that section 60(1) of the Local Government (Miscellaneous Provisions) Act 1976 has provided as follows under the heading "Suspension and revocation of vehicle licence":

"Notwithstanding anything in the Act of 1847 or in this Part of this Act, a district council may suspend or revoke or (on application therefor under section 46 of the Act of 1847 or section 51 of this Act, as the case may be) refuse to renew the licence of a driver of a hackney carriage or a private hire vehicle on any of the following grounds..."

Various grounds are then set out and they include any other reasonable cause. If they do so they have to give notice to the proprietor of the vehicle of the grounds upon which they have so acted.

5. It is clear that that provision presupposes that there is power to renew a licence granted under the Act of 1847. The question therefore is whether such renewal can take place after the licence has expired.
6. The first question that is asked by the Crown Court is whether a Hackney Carriage Licence is capable of renewal in a sense envisaged by section 60 of the 1976 Act before the expiration of the year period described by section 43.
7. It seems to me that the word "renew" can quite properly mean "grant afresh". That is to say, to permit the licence that has been granted to be treated as a new licence. That is a perfectly normal use of the English language and one which is clearly recognised by section 60 of the 1976 Act. Thus, an individual licence can only last for 12 months. That licence can be renewed and therefore is treated as a new licence which again will last for a period of 12 months and so on, if application is made. If it is a question of renewal then renewal will normally only be able to be made upon the same terms, that is to say it is a mechanical exercise unless there are reasons why such renewal should not be permitted.
8. In the case of Exeter, and I suspect in the case of other authorities, there is a condition attached to a licence that an application for renewal must be made before the licence comes to an end - that is to say before the 12-month period expires. In fact, the condition imposed by Exeter requires that such an application be made not more than 14 days before the 12 month period comes to an end, but can be made at any time up to the expiry of that 12-month period. That means inevitably that if the application is left until the last day of the validity of the licence it is unlikely to be processed until the following day at the earliest and if weekends intervene it will be longer than the following day. Thus, any renewal will have to take place after the licence has expired. I am told that there is what I am bound to say seems to be a little bit of a fudge applied in those circumstances because, albeit it is granted in those circumstances, it is treated as a fresh licence - that is to say as if it were not a renewal but a grant of a fresh licence which means that the conditions that normally have to apply in order to enable a new licence to be obtained are not imposed in such a case. It seems to me that that is a wholly unnecessary provision. There is nothing that prevents a licence which has expired from being renewed. As a matter of English, if for example one forgot to renew a driving licence the normal expression to be used when one remembered is "I forgot to renew, I must renew now" and no one, as it seems to me, could suggest that that was a misuse of the English language. As it seems to me that is entirely consistent with the approach indicated by the Act of 1976.
9. Although in the case of Exeter no doubt a renewal can be dealt with speedily, it may be that in other cases it will take a few days for the matter to be considered or there may be questions as to whether a renewal is permissible in an individual case because there may be concerns that there possibly has been a breach of conditions or there are grounds for refusing to renew and thus it could take a few days to sort that out. It would be somewhat absurd if in taking those few days so that the licence had expired it then became impossible to renew it within the meaning of the legislation. Accordingly, I take the view that not only is it permissible to renew when the licence still exists, but also it is possible to renew a licence, that is to say effectively to grant

what amounts to a new licence, after the original has expired and that is no breach of section 43.

10. Concern is raised by the council because there are quotas and in fact I think every council will adopt a policy of quotas for Hackney Carriage Licences on the basis that the demand must be there to justify the grant of a licence. Accordingly, there is often a queue of applicants who wish to obtain a licence if an existing one is not renewed. Accordingly, if no application in time is made then the council officer, who has the responsibility, may decide to grant a new licence to another applicant and accordingly when the application does come in he finds himself in a difficulty if there is a power to renew notwithstanding the application is made after the licence has expired.
11. It seems to me the answer to that problem lies in the condition. The applicant will know that he must make his application before the licence expires and if he does not do so he will find that his application is likely to be rejected. Indeed, unless he has a very good reason for the failure that will almost certainly be the case. I am told that there are problems in deciding how long a period should be left before a decision is made to grant a fresh licence to take the place of the one in respect of which no application for renewal has been made. The simple answer to that surely is that certainly a couple of days, perhaps three days, who knows, but a very short period is one which is appropriate just in case there is a good reason for the delay. In fact in this case the application was made a day late and the Crown Court decided that there was indeed a very good explanation -- I think the individual who was deputed to make the application had a sick child at the material time and accordingly had been distracted but had realised quickly and tried to make his application but the weekend had come upon him and thus the application was only a day late and, perhaps slightly unsurprisingly, the Crown Court took the view that in those circumstances it was not reasonable for the council to have refused to entertain the application for a renewal. But I must make it clear that if it is apparent from the conditions that the application has to be made within the period the licence is in force, it will take very strong case and very exceptional circumstances for an applicant who fails to make his application for renewal in time to be able to justify a claim that the council ought in the circumstances to have granted his licence. Such exceptional circumstances can exist and as I say it would be sensible for a council to give two or three days at least before taking the step of deciding to grant it to someone else. After all, I suppose such an application can for example be made by post and if there are postal difficulties that would be a good reason no doubt to defer any action to make sure that there had not been a delay in the post. One can imagine other circumstances which might make it obvious that it would be prudent to give a little extra time in all circumstances. It is obviously impossible to spell those out, but as I say suffice it to say that if the condition is not met it will be proper for the council to take the view that they will only allow renewal in exceptional circumstances.
12. Accordingly, I must deal with the questions raised by the case stated:-
 - (1) Is a Hackney Carriage Licence capable of renewal in the sense envisaged by section 60 Local Government (Miscellaneous Provisions) Act 1976 before the expiration of the one year period prescribed by section 43 Town Police Clauses Act 1847? The answer to that is: "Yes".

(2) Is a Hackney Carriage Licence capable of renewal, in the same way, after the expiration of that one year period? Answer: "Yes". If so, how long after does it cease to be so capable? Answer: "There is no particular period, but as I have indicated it would only be in exceptional circumstances that a delay of more than a few days would be permissible." (3) If the licence was capable of renewal, ought the applicant to have renewed the Licence in his case? That is not a question of law. It is a question of exercise of discretion and I need not answer it.

13. It follows therefore that this appeal will be dismissed.