
GENERAL LICENSING SUB COMMITTEE 21/11/18

Present: Councillor Eryl Jones Williams (Chair), Councillors Annwen Hughes and Edgar Owen

Officers: Geraint B. Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager), Rhian Jones (Licensing Officer) and Lowri Haf Evans (Member Support Officer).

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12 A, of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, nor their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR A HACKNEY/PRIVATE HIRE LICENCE

The Chairman welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application and the aim was to protect the public by ensuring that:

- A person is a fit and proper person
- The person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children and young people
- The safeguarding of vulnerable persons
- The public have confidence in their use of licensed vehicles.

The Licensing Officer presented the written report on the application received

from Mr A for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions. It was highlighted that the applicant had been a licensed driver with the Council at the time of an incident, which led to his being cautioned by North Wales Police in May 2017. In accordance with taxi licensing conditions, drivers were required to inform the Licensing Authority of any conviction or criminal incident leading to a Police Caution.

The applicant was invited to expand upon his application and to offer reasons for not notifying the Licensing Authority of the caution he had received from North Wales Police (May 2017) for disorderly behaviour. Mr A noted that the incident had taken place on his stag night and that his behaviour had been out of character. He regretted what he had done and explained that he had apologised to the shop owner the following morning for his behaviour. He was not aware that accepting a caution was considered to be a conviction and that it would appear on his DBS record.

The applicant's employer was invited to submit observations and confirmed that he was not aware of the caution when he offered the post to Mr A although the applicant had now provided him with a full explanation of the incident. The employer reiterated that the applicant was a good driver and there had been no complaints about his work of transporting people to and back and forth to hospital.

The applicant withdrew from the room whilst the Sub-committee members discussed the application.

RESOLVED that the applicant was not a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching their decision, the Sub-committee considered the following:

- the requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles' Gwynedd
- the applicant's application form
- verbal observations, documents, photographs submitted by the applicant during the hearing
- verbal observations by the applicant's employer
- the Licensing Department's report along with the DBS statement disclosing convictions.

Specific consideration was given to the following matters.

The applicant received a conviction for a series of offences (January 2010). The first offence was failing to surrender to Custody on the allocated time which is contrary to the requirements of section 6 of the Bail Act 1976. He was given a fine of £100 and was ordered to pay £85 costs. The second offence was for being drunk and disorderly under section 91 of the Criminal Justice Act 1967 (January 2010) where he was fined £50. The applicant received a conviction from Wolverhampton Magistrates' Court (February 2010) for damage to property contrary to section 1 of the Criminal Damage Act 1971. He was given a fine of £65 and ordered to pay costs of £85. In May 2017, the applicant received a caution from North Wales Police for the use of threatening and insulting words or behaviour, or disorderly behaviour intending to cause harassment, alarm or distress contrary to the Public Order Act 1986.

Paragraph 2.2 of the Council's Policy was considered, this states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of conviction for an appropriate period as stated in the Policy, and to show evidence that he/she is a fit and proper person to hold a licence. The applicant has a responsibility to show that he/she is a fit and proper person.

Paragraph 2.3 of the Policy was considered, where reference is made to 'other matters for consideration'.

Paragraph 4.5 of the Council policy was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise under the 1974 Act.

Paragraph 6 of the Policy addresses violent offences. Paragraph 6.5 of the Policy states that an application for a licence will usually be refused if the applicant has a matter to be considered (including cautions) for common assault that is less than three years prior to the date of application. It is also stated in paragraph 6.6 that an application will usually be refused if an applicant has more than one conviction in the last 10 years for an offence of a violent nature or another matter to be considered in relation to that.

The sub-committee also gave consideration to paragraph 16.1 of the Council's policy that deals with repeat offending. Firstly, it is necessary to ensure that the convictions satisfy the individual policy guidelines, but that they together create a history of repeat offending that indicates a lack of respect for the welfare and property of others. Under the Policy it is a requirement that 10 years have elapsed since the most recent conviction.

The Sub-committee noted there are no specific provisions in the Policy in relation to the first two offences (failure to surrender to custody and being drunk and disorderly). Although these offences did highlight concern, they were beyond the requirements of the three year policy and did not form sufficient grounds to refuse the application.

Nevertheless, the Sub-committee considered that the offence of damage to property and the caution received in 2017 were violent offences and also counted as more than one offence of a violent nature within the last ten years. This provided grounds to consider paragraph 6.6 of the policy. Additionally, both offences also created a history of re-offending which demonstrated a lack of respect towards the welfare and property of others. Under paragraph 16.6 of the policy, 10 years must elapse since the most recent conviction.

Under the provisions in Sections 51, 55, and 59 of the Act, the Licensing Authority is required to ensure that an individual applying for a driver's / operator's licence, or to renew such a licence, is a 'fit and proper' person to hold that licence. However, if there are any matters to be considered in relation to the applicant / licence holder, the Licensing Authority must consider the severity, relevance, date of the offence, date of conviction, age at time of conviction, type of sentence, patterns of offending and other.

Having considered the background of the incident in 2017 the Sub-committee was not satisfied, although the applicant did admit his guilt, that the reasons for his behaviour are sufficient to excuse the offence. It was noted that the applicant had a hackney driving licence at the time he received the caution from North

Wales Police but that this information was not shared with the Licensing Department. It appears that the information was shared when completing and application to review a licence. Despite the applicant noting that he was not aware of the need to disclose the information about the caution, the Sub-committee did not accept this as the licence application form notes a clear need for information about offences and cautions. As a driver, he should be aware of this need.

The Sub-committee took into consideration that the applicant did not make an honest disclosure to his employer and that this highlighted that he was not a fit and proper person.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant and that he also had the right to appeal against the Sub-committee's decision within 21 days of receiving the letter.

6. APPLICATION FOR A HACKNEY/PRIVATE HIRE LICENCE

The Chairman welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application and the aim was to protect the public by ensuring that:

- A person is a fit and proper person
- The person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children and young people
- The safeguarding of vulnerable persons
- The public have confidence in their use of licensed vehicles.

The applicant was invited to expand on his application and offer an explanation on the offences. He noted that he had a keen interest in cars and driving cars and was in the process of opening a garage in the near future. He reiterated that he had completed a number of driving courses and that a job as a taxi driver would be an opportunity to receive additional income to support his enterprise. He noted that AS Cabs had offered him flexible hours as a driver should his application be successful, that he had completed a health check and was paying for the licence out of his own pocket. He confirmed that he had not consumed alcohol since 2005 and that he did not take drugs.

He withdrew from the room whilst Sub-committee members discussed the application.

RESOLVED that the applicant is a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles' Gwynedd
- the applicant's application form
- verbal observations, documents, photographs submitted by the applicant during the hearing
- the Licensing Department's report along with the DBS statement disclosing convictions.

Specific consideration was given to the following matters.

The applicant received a conviction (March 2006) from Mold Crown Court for causing and injury to a person contrary to the provisions of the Offences Against the Person Act 1861. He received a 9 month custodial sentence which was suspended for two years, a 12 months protection order, 250 hours of unpaid work and an order to pay £600 in costs. In May 2011, he received a conviction from Gwynedd Magistrates' Court for two drug related offences contrary to the Misuse of Drugs Act 1971 - one for producing cannabis and of being in possession of cannabis resin (December 2010). He was sentenced to 12 months on a community order and an order to carry out 80 hours' unpaid work for possession and a 12 month community order, an order to carry out 80 hours' unpaid work and costs of £85. The drugs were seized and destroyed.

Attention was drawn to the fact that the applicant volunteered the information in his application form that he has a conviction for driving without insurance (July 2012) where he was issued with three points.

Paragraph 2.2 of the Council's Policy was considered, this states that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of conviction for an appropriate period as stated in the Policy, and to show evidence that he/she is a fit and proper person to hold a licence. The applicant has a responsibility to show that he/she is a fit and proper person.

Paragraph 4.5 of the Council policy was considered which stated that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allowed the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise under the 1974 Act.

Paragraph 6 of the Policy addresses violent offences. Paragraph 6.5 of the Policy states that an application for a licence will usually be refused if the applicant has a matter to be considered (including warnings) for common assault that is less than three years prior to the date of application.

Consideration was given to section 9 of the Policy which discusses drug-related offences and it was highlighted that section 9.1 outlined that any offence related to drugs is a serious matter and that the nature and volume of the drug in question should be considered. It was reiterated that an application would be refused if there was more than one conviction against the applicant for drug possession offences, and he had not been free from conviction for at least five years. Paragraph 9.4 of the Policy states that a licence application will normally be refused where the applicant has an isolated conviction for an offence related to the possession of drugs within the last 3 years.

Paragraph 12.1 defines serious offences that include driving a vehicle without insurance with 12.3 noting that the application would be refused if there is a conviction against the applicant and he has not been free from conviction for at least six months.

The sub-committee also gave consideration to paragraph 16.1 of the Council's policy that dealt with repeat offending. Firstly, it was necessary to ensure that the convictions satisfied the individual policy guidelines, but that they together created a history of repeat offending that indicated a lack of respect for the welfare and property of others. Under the Policy it was a requirement that 10

years had elapsed since the most recent conviction.

The Sub-committee considered that the first offence equates to a violent offence but with 12 years having passed, there is no basis to refuse the application. Nevertheless, there could be grounds to refuse the application in light of paragraph 16.1. The Sub-committee considered that the second conviction relates to drugs offences, but as 7 years have elapsed, there are no grounds to refuse the application. The Sub-committee considered that the offence of driving without insurance is a serious traffic offence, but again, 8 years have elapsed and there are no grounds to refuse the application.

However, the first two offences created a history of repeat offending which demonstrates a lack of respect towards the welfare and property of others and consequently there is a need to consider paragraph 16.6 of the policy which notes that 10 years must elapse since the most recent conviction.

The Solicitor highlighted that the Policy's provisions are not mandatory and it is possible to deviate from the recommendations if the facts of the case justify this. Having considered the applicant's explanation for the circumstances of the convictions, the Sub-committee decided that the circumstances of the application justified a deviation from the Policy's prohibition, for the following reasons:

- The applicant confirmed that the 2005 conviction happened during the Sesiwn Fawr Dolgellau festival where he was attacked by two men. The applicant lost his temper and threw a bottle at one of the men. The police officers arrived at the scene and he admitted that he was guilty and was taken to the cells. He noted that he had abstained from alcohol since that incident. The Sub-committee was of the opinion that this conviction was a one-off incident where he was provoked, was out of character and also led to a change in attitude. The absence of any additional offences, along with the abstaining from alcohol since that time strengthened the case.
- The applicant confirmed that the 2011 conviction was related to an incident where he allowed his friend to leave one cannabis plant at his property. He noted that he had not taken drugs neither did he play any part in producing drugs. The Sub-committee had a firm opinion on illegal drugs, however it was considered that the applicant's behaviour in this case was relatively innocent and that the sentence of a community order (and no fine) by the Magistrates' Court reflected this. There was no evidence of large-scale production, and there was no evidence of any economic gain.

Under the circumstances, the Sub-committee was satisfied that Mr A is a fit and proper person to hold a hackney vehicle/private hire driver's licence. The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The meeting commenced at 2.15 pm and concluded at 3.25 pm

CHAIRMAN