
GENERAL LICENSING SUB COMMITTEE 20/12/18

Present:: Councillor Elfed Williams (Chair), Councillors Steve Collings and Dafydd Owen

Officers: Geraint B Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager), Owain Williams (Enforcement Officer), Lowri Haf Evans (Member Support Officer) and Alun M Roberts (Public Protection Enforcement Officer) – Observer

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 Solicitor highlighted the need for clarity regarding what was to be determined.

a) That it was an application for a hackney/private hire driver's licence before the Sub-Committee. The application before them was not for an operator's licence and therefore the Sub-committee's resolution would not be a presumption of impact on other licences. This would be for discussion at another sub-committee.

b) That the result of the hearing was not a revocation. It was noted that a revocation suggested a driver's licence that was in force. The renewal system did not act as a review of a current licence but as a request for a new driver's licence to be effective from the final date of the current licence. The only possible result from the hearing would be to grant or refuse.

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.

The applicant's representative was invited to expand on the application and provide information about the background of the offences and the applicant's personal circumstances. It was noted that he had run a business for over 20 years and that reference letters had been submitted noting that he was a good employer and was highly respected in the local community.

In response to a comment regarding the invalidity of the insurance of the car inspected the applicant's representative noted that the vehicle had full insurance, there was no risk to the public, the car was safe and the applicant had not been found guilty. The Enforcement Officer argued that that the comprehensive insurance for the vehicle was invalid at the time of the inspection and a quote from the relevant insurance policy was given with the DBS record.

The applicant and his representative withdrew from the room while 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'
- the applicant's application form
- verbal observations presented by the applicant and his representative during the hearing
- reference letters
- the Licensing Department's report along with the DBS statement disclosing convictions.

Specific consideration was given to the following matters.

The applicant had received a formal warning by North Wales Police for disorderly behaviour or use of threatening, aggressive or insulting language likely to cause harassment or distress. (February 2014) contrary to the Public Order Act 1986. On two occasions, (2014 and 2015) the applicant submitted forms to renew a

driver's licence and failed to declare on his application form a warning in 2014, contrary to the licensing condition in paragraph 6 of the Council's Licensing Policy.

In January 2018, the applicant was found guilty by Caernarfon Magistrates Court on one charge of allowing a vehicle to be used as a private hire vehicle without a current licence, contrary to section 46 (2) of the Local Government (Miscellaneous Provisions) Act 1976. He received a fine of £450.00, an order to pay costs of £200 and a surcharge of £45 to the victim. As a result of the charge the applicant received a driver's licence revocation notice from the Licensing Authority (February 2018) in accordance with the provisions of section 61 of The Local Government (Miscellaneous Provisions) Act 1976. The revocation was made by an officer under the delegated rights arrangements and not by a Sub-committee. The applicant submitted an appeal to the Magistrates Court regarding the revocation and an arrangement was agreed in a hearing (June 2018) that the applicant would withdraw his appeal, that the Council (Licensing Department) would withdraw the revocation, and the applicant's suitability as a 'fit and proper person' would be determined in a hearing before the Sub-committee.

It was highlighted that the applicant had not disclosed the 2014 warning and the 2018 offence on his application to renew his licence.

In October 2018, when submitting an application form at Siop Gwynedd, Caernarfon, the applicant behaved in an unacceptable manner by verbally responding in a personal and aggressive manner to the Licensing Officer. Likewise, in a telephone call with the Line Manager of the member of staff, the applicant accused the member of staff of lying. On the following day a letter was sent to the applicant by the Line Manager outlining the incident and warning him that no Council officer would tolerate such behaviour.

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 states that the term 'other matters to be considered' may include warnings or other matters that are relevant to 'fitness and propriety'.

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 and paragraph 6.1 states that licensed drivers have close regular contact with the public therefore the sub-committee should adopt a robust stance with those who have offences involving violence. 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 for common assault that is less than three years prior to the date of application. The paragraph lists amongst other matters offences that deal with common assault and obstruction. Paragraph 6.6 states that an application will normally be refused if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

Paragraph 16.1 of the Council's policy 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. The policy states that 10 years must elapse since the most recent conviction.

Paragraph 17 of the Policy addresses breach of legislation, byelaws and licence conditions. 17.1 states that an applicant with a conviction for the above matters is unlikely to be granted a licence unless a period of at least 12 months has elapsed since the most recent breach.

The Sub-committee concluded that the caution given in 2014 involved violence and should therefore be considered under paragraph 6.5 of the policy. However, as the conviction was historic (beyond the policy requirements of three years) there was no reason to refuse the application. Although the Sub-committee had decided that the conviction on its own was insufficient to refuse the application, it was recognised that the conviction with a combination of similar convictions, could be grounds to refuse bearing in mind paragraphs 6.6 and 16.1.

The Sub-Committee noted that the applicant's failure in 2014, 2015 and 2018 to disclose the 2014 warning when renewing his licence breached licence conditions. Since the last conviction had occurred three months ago, it was anticipated that there was a need to consider paragraph 17.1. The Sub-committee's attention was drawn to the fact that the 2018 conviction had not been listed on the DBS statement as it was not recognised as a crime by the National Police Records (Recordable Offences) Regulations 2000. However, the Solicitor highlighted, although there was no record of the offence, it was still relevant to the hearing.

In considering the October 2018 incident as outlined by the Licensing Manager, the Sub-committee came to the decision, as the applicant had not taken any steps to argue against the accusations, that the behaviour was of a violent nature. The 2014 warning and the October 2018 incident were considered to be of a violent nature, and they had taken place within the last ten years. Consequently, paragraph 6.6 of the policy was being considered. Additionally, the 2014 warning, 2018 conviction and the October 2018 incident were a series of repeat offending within ten years, that demonstrated a lack of respect towards the welfare and property of others. Again, this led to the Sub-committee's decision to consider paragraph 16.1.

The Solicitor highlighted, although there were clear reasons to refuse the application, the Policy's provisions were not mandatory, and that it was possible to deviate from the recommendations if the facts of the case justified this.

It was noted that 'fit and proper', amongst other matters, required an assessment of the applicant's business competence, which would include looking at the care given when submitting paperwork to renew a licence. The applicant failed to note the 2014 warning three times which suggested a disorderly slap-dash attitude towards paperwork and an attempt to hide relevant information.

It was noted that 'fit and proper' also considered if the applicant could behave in a way that was not threatening under challenging situations. The applicant should be able to act in a calm and composed manner in any dispute or there would be doubts about the way he treats customers. If the applicant had acted in a proper manner in October 2018, the 2014 warning would be an individual matter and therefore it would not be necessary to consider paragraph 6.6 (re-offending). The Sub-committee noted that in future the applicant when applying for a licence

should treat Council officers with respect.

Having considered all the elements, the Sub-committee were not convinced that they should deviate from the presumption to refuse the application. As a result, the application was refused.

The Solicitor reported that the decision would be confirmed formally by letter sent to the applicant and the Licensing Unit would be in contact to confirm the licence documentation

The meeting commenced at 10.50 am and concluded at 12.10 pm

CHAIRMAN