
GENERAL LICENSING SUB COMMITTEE 9/07/20

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

Officers: Geraint Brython Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager) and Lowri Haf Evans (Democratic Services 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

It was 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 12A 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, or 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

a) The Chair welcomed everyone to the meeting. He explained 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, with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr A for a hackney carriage/private hire driver's licence. The Sub-committee was

requested to consider the application in accordance with the DBS record, the guidelines on criminal offences and relevant convictions. The Licensing Authority had recommended that the Sub-committee should refuse the application.

The applicant and his prospective employer were invited to expand on the application and provide information about the background of the convictions and the applicant's personal circumstances. The applicant's prospective employer explained that the incidents that were recorded on the DBS were historical incidents that had occurred when Mr A went through a difficult period as a teenager. He added that he was aware of his background and that he had discussed the matter with the applicant's other employer and had been provided with a reference, and that he was willing to give him a chance.

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

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

- The requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- the Licensing Department's report and the DBS statement
- the applicant and his prospective employer's verbal representations

ch) Specific consideration was given to the following matters

In April 1999, the applicant was found guilty by Tameside Magistrates Court on three charges: taking a vehicle without permission (contrary to s12 (1) Theft Act 1968); driving contrary to the conditions of a driving licence (contrary to s87 (1) Road Traffic Act 1988) and using a vehicle without insurance (contrary to s143 (2) Road Traffic Act 1988). He received a conditional discharge for 12 months, a 7-point endorsement on his licence and an order to pay costs of £55.00.

In May 2001 the applicant was found guilty by Mold Magistrates Court on a charge of destroying or damaging property (contrary to s1 (1) Criminal Damages Act 1971). He received a fine of £50.00, an order to pay costs of £40.00 and damages of £50.00.

In February 2003 he was found guilty by Conwy Magistrates Court on two charges of using a vehicle without insurance, (contrary to s143 (2) Road Traffic Act 1988) and driving while disqualified (contrary to s103 (1) (B) Road Traffic Act 1988). He received a community penalty order of 120 hours, a fine of £50.00, an order to pay costs of £30.00 and a 6-point endorsement on his licence.

In August 2003 he was found guilty by Denbighshire Magistrates Court on two charges of using a vehicle without insurance, (contrary to s143 (2) Road Traffic Act 1988) and driving while disqualified (contrary to s103 (1) (B) Road Traffic Act 1988). He received a community rehabilitation order for 18 months, a community penalty order of 100 hours, a driving disqualification until he passed an extended test, and an order to pay costs of £35.00. The order was revoked in September 2004 as a result of good progress.

In January 2005 he was found guilty by Conwy Magistrates Court on three charges of driving while disqualified (contrary to s103 (1) (B) Road Traffic Act 1988), using a vehicle without insurance, (contrary to s143 (2) Road Traffic Act 1988) and possession of an offensive weapon in a public place (contrary to s1

Prevention of Crime Act 1953). He received a community rehabilitation order for two years, a community penalty order of 100 hours, a curfew order for six months, an order to pay costs of £55.00 and was disqualified from driving until he passed an extended test. For possessing an offensive weapon he received a community rehabilitation order for two years, a community penalty order of 100 hours, disposal of the hockey stick, and a six-month curfew order.

In February 2005 he was found guilty by Conwy Magistrates Court on two charges of using a vehicle without insurance, (contrary to s143 (2) Road Traffic Act 1988) and driving when disqualified (contrary to s103 (1) (B) Road Traffic Act 1988). He was imprisoned for six weeks and received a six-point endorsement on his licence.

In August 2005 he was found guilty by Tameside Magistrates Court on four charges (two individual occasions) - two charges of driving while disqualified (contrary to s103 (1) (B) Road Traffic Act 1988), and two charges of using a vehicle without insurance, (contrary to s143 (2) Road Traffic Act 1988). He received a five month suspended sentence and an endorsement on his licence. For driving while disqualified he received a further five-month sentence, suspended for 18 months. He also received a supervision order for 12 months, a two-year driving ban, and an endorsement on his driving licence.

In September 2008 he was found guilty by Gwynedd Magistrates Court on three charges of driving while disqualified (contrary to s103 (1) (B) Road Traffic Act 1988), using a vehicle without a test certificate (contrary to s47 (1) Road Traffic Act 1988) and using a vehicle without insurance (contrary to s143 (2) Road Traffic Act 1988). He received a 12-month community order with a supervision condition, a 12-month disqualification from driving and an order to pay costs of £60.00. For driving without insurance he received a 12-month community order (concurrent with the supervision order).

In September 2009 he was found guilty by Conwy Magistrates Court on two charges of destroying or damaging property (contrary to the Criminal Damages Act 1971) and common assault (contrary to section 39 Criminal Justice Act 1988). He received a 12-month community order, an order to pay damages of £329.00 and costs of £250.00. He received a further 6-month community order and an activity requirement for 12 days for driving without insurance.

In December 2010 he was found guilty by Conwy Magistrates Court on a charge of failing to comply with the requirements of a community order (contrary to schedule 8 Criminal Justice Act 2003). He was ordered to pay costs of £85.00, to continue with the original order made in September 2010 and to continue with the activity requirement of six days.

In January 2018 he received three penalty points for one speeding incident.

(A total of ten convictions and one speeding incident in a period of 19 years between 1999 and 2018).

Paragraph 2.2 of the Council's Policy was considered, which 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 any conviction for an appropriate period as stated in the Policy, and to show evidence

that the individual was a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.3 of the Policy confirmed that "other matters to be considered" included cautions.

Paragraph 4.5 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 6.0 of the Policy addresses violent offences. Paragraph 6.1 states that, since licensed drivers come into close contact regularly with the public, the sub-committee shall take a firm stance towards those who have offences involving violence. Paragraph 6.2 of the Policy states that an application for a licence will usually be refused or revoked if the applicant has a conviction, until they have been free from such convictions for at least three years. 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 and criminal damage that is less than three years prior to the date of the application. Paragraph 6.6 of the Policy states that an application will normally be refused if an applicant has more than one conviction for an offence of a violent nature within the last ten years.

Paragraph 8.0 of the Policy, which deals with dishonesty offences, was considered together with paragraph 8.1 that states that a serious view should be taken of any conviction involving dishonesty. Paragraph 8.2 notes that an application would normally be refused where the applicant has a conviction for a listed offence, and that the conviction was received less than three years prior to the date of the application. It was noted that the list of offences included amongst others, taking a vehicle without consent.

Section 12 of the Policy relates to driving convictions, and paragraph 12.2 lists major traffic offences for the purposes of the Policy. These offences include BA10 (driving while disqualified under a Court order) and IN10 (use of an uninsured vehicle). Paragraph 12.3 states that an application will be refused if there is a conviction against the applicant and he/she has not been free of the conviction for at least six months. Paragraph 12.4 notes that an application will be refused if the applicant has more than one major traffic offence within the last five years, and no further application should be considered until a period of at least three years free from such convictions has elapsed. Paragraphs 12.6 to 12.11 deal with driving disqualifications, with paragraph 12.10 specifically noting that an application will normally be refused where the applicant has a conviction resulting in a period of disqualification of 12 months or more, unless a period of at least 18 months has elapsed since the end of the disqualification period.

Section 13 relates to minor traffic offences, and paragraph 13.3 was considered, as it states that more than one conviction for a minor driving offence could lead to an application being refused, especially if there are several convictions to be considered for the same offence.

Paragraph 16.1 of the Policy deals with repeat offences. Firstly, it must be ensured that the convictions satisfy the policy guidelines individually, and that together they create a history of repeat offending that indicates a lack of respect for the welfare and property of others. The Policy states that ten years must have elapsed since the most recent conviction.

Section 17 of the Policy addresses situations regarding breach of legislation,

byelaw or licence conditions. It is noted that an applicant who has a conviction or other matters to be considered for a breach of legislation, is unlikely to be granted a licence unless a period of at least 12 months has elapsed since the most recent breach.

- d) The Sub-committee determined that the 1999 conviction was an offence that involved dishonesty, however, as the last offence occurred over 21 years ago (beyond the period of three years), paragraph 8.2 was irrelevant, and there was no reason to refuse the application, although it could, in conjunction with other convictions, be considered under paragraph 16.1.

The Sub-committee concluded that the convictions dating from May 2001, January 2005 (possessing a weapon) and September 2009 were all violent offences. However, as the last offence had occurred over ten years ago (beyond the period of three years), paragraph 6.5 was irrelevant, and there were no grounds to refuse the application, although it could, in conjunction with other convictions, be considered under paragraph 16.1.

The information regarding the conviction in December 2010 was not relevant to the specific area covered within the Policy, and therefore the provisions of section 17 were considered. As the conviction had occurred over twelve months ago, there was no reason to refuse the application, although once again it could, in conjunction with other convictions, be considered under paragraph 16.1.

In the context of the other convictions the Sub-committee concluded that the convictions related to major traffic offences. However, as the last conviction had occurred over 11 years ago, the Sub-committee was of the view that these convictions were not grounds to refuse the application under paragraph 12.4, although once again they could, in conjunction with other convictions, be considered under paragraph 16.1. It was noted that there were a number of driving disqualifications (2003, 2005 and 2008), but as there had been no disqualifications during the past 18 months, there was no reason to refuse the application under paragraph 12.10.

However, the Sub-committee considered that collectively, all the convictions equated to repeat offending that indicated a lack of respect for the welfare and property of others. Consequently, paragraph 16.1 of the Policy was relevant, and solely on these grounds, there was a presumption in favour of refusing the application.

The Solicitor highlighted that the Policy's provisions were not mandatory and that the Sub-committee could deviate from the recommendations if the facts of the case justified that. Particular consideration was given to paragraph 5.1 of the report which addressed the seriousness of the offences, their relevance, the date they were committed, the date of conviction and the applicant's age at the time of conviction, the sentence given by the Court and whether the offences related to a pattern of offending, as well as any other relevant factors.

The Sub-committee gave specific consideration to the speeding offence dating from 2018. With the exception of this incident, the conviction in December 2010 was the most recent whereby paragraph 16.1 provided the grounds to refuse the application (within a few months only). It was noted that almost a decade had passed since December 2010, and that the applicant had no subsequent convictions. The incident of speeding in 2018 was a minor traffic offence, and although it was cause for concern, it did not compare to the seriousness of the

previous major traffic offences that the applicant had committed. Under the circumstances, the Sub-committee was satisfied that this incident, compared to the other convictions, did not appear to be 'within the spirit of paragraph 16.1'.

The representations from the applicant's prospective employer were considered, that explained that the applicant had experience of working for a courier company and of working in a local hospital with SIA accreditation. This was considered to be a sign that other employers had recognised that the applicant was a suitable person for this type of work. It was added that although the applicant had offended in the past, he had now matured and evidence of this could be seen in the DBS record.

This was a difficult application for the Sub-committee to decide, as the application contained both strengths and weaknesses. Having carefully weighed up the evidence and the information, the Sub-committee was willing to deviate from the presumption in favour of refusing the application in this case, and under the circumstances it was decided that the applicant was a fit and proper person to hold a hackney/private hire vehicle driver's licence. The applicant was encouraged to take advantage of the opportunity to further improve himself.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

The meeting commenced at 2.00 pm and concluded at 3.30 pm

CHAIRMAN