

**LICENSING COMMITTEE**

A meeting of the Licensing Committee was held on 30 July 2018.

**PRESENT:** Councillors Councillors J A Walker (Chair), R Arundale, S Biswas, R Brady, J Goodchild, T Higgins and L Lewis

**OFFICERS:** S Bonner, A Perriman, S Wearing

**APOLOGIES FOR ABSENCE** Councillors J Blyth, T Harvey, T Mawston, D McCabe, D Rooney. .

**DECLARATIONS OF INTERESTS**

<b>Name of Member</b>	<b>Type of Interest</b>	<b>Item/Nature of Interest</b>
Councillor Shamal Biswas	Non-Pecuniary	Agenda Item 5 (applicant known to him)

**1 MINUTES OF THE PREVIOUS MEETING OF THE LICENSING COMMITTEE HELD ON 9 JULY 2018**

Councillor Lewis queried, under item number 5, paragraph 6, if a licence would be refused if an applicant had more than 1 conviction for drug related offences, as stated in the minutes. The Council's legal representative confirmed that the minutes were accurate and that a licence would be refused if an applicant had more than 1 conviction for drugs offences. It was also confirmed that this reflected the Council's current licensing policy.

The minutes of the previous Licensing Committee, held on 9 July 2018, were submitted and approved as a correct record.

**2 EXCLUSION OF PRESS AND PUBLIC.**

To consider passing a Resolution Pursuant to Section 100A (4) Part 1 of the Local Government Act 1972 excluding the press and public from the meeting during consideration of the following items on the grounds that if present there would be disclosure to them of exempt information falling within paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**\*\* SUSPENSION OF COUNCIL PROCEDURE RULE NO. 5 - ORDER OF BUSINESS**

**ORDERED:** that in accordance with Council Procedure Rule No. 5, the Committee agreed to vary the order of business to consider agenda item 6 as the next item of business.

**3 REVIEW OF PRIVATE HIRE VEHICLE DRIVER LICENCE, REF NO: 27/18**

The Director of Culture and Communities submitted an exempt report in connection with a review of Private Hire Vehicle Driver Licence, Ref: 27/18, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The driver, who was in attendance at the meeting, verified his name and address and confirmed he had received a copy of the report.

The Principal Licensing Officer presented the report setting out the circumstances of the case in relation to the offences listed.

It was highlighted that the driver was first licensed with Middlesbrough Council in July 2010 and his licence was due to expire in June 2019. It was also highlighted that the driver had previously appeared before the Committee, the first time in June 2010 in view of the convictions listed at 1) to 4) in the report. At this appearance the Committee refused the

driver's application, which was subsequently granted upon appeal. The second appearance in February 2011 related to a complaint made against the driver by a member of the public resulting in the revocation of his licence, which was reinstated upon appeal in July 2011. The driver's third appearance was in November 2013 relating to speeding offences listed at 5) to 7) in the report, the consequence being a warning that further infractions would result in the driver's return to the Committee. Members also instructed the driver should complete a Driver Improvement Scheme which was completed on 8 January 2014.

The driver now appeared before Members in relation to the convictions listed at 8) to 10) in the report. It was highlighted that the driver had failed to declare the offences within 7 days of the occurrence and the Licensing Service only became aware of the offences during a DVLA check during the driver's licence renewal of in June 2018.

The driver was interviewed by a Licensing Enforcement Officer on 3 July 2018 where he confirmed there were no outstanding matters that the Council was unaware of and offered an explanation of the offences listed.

The driver confirmed that the report was an accurate representation of the facts and was invited to address the Committee. The driver queried why information considered at previous committees had been included in the report. It was confirmed that the contents of the report were factual and while offences 1) to 7) had been considered by previous Committees they still had to be listed in the report. The driver also provided his version of events regarding an incident in December 2015 which led to a warning letter being issued. A copy of the letter was attached at Appendix 1.

The driver addressed the Committee and responded to questions from Members and the Council's legal representative.

It was confirmed that there were no further questions and the driver, and officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew whilst the Committee determined the review.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

**ORDERED:** That Private Hire Vehicle Driver Licence, Ref 27/18, be revoked on the grounds of any other reasonable cause under Section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976. The reasons for the decision were as follows:-

1. The Committee carefully considered the review based upon the report and appendices, the representations of the driver and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018. The matter was considered on its own merits.
2. The driver was advised that he would receive the full decision, considerations and reasons within five working days.
3. The driver appeared before the Licensing Committee in respect of driving offences dated 23 June 2015, 03 March 2017 and 28 October 2017. The three offences were that of driving in excess of the speed limit (the offences were numbered 8-10 in the Report provided to the Committee and the driver).
4. The purpose of the review of the Private Hire Vehicle Driver Licence was on the basis of the three further motoring offences recorded against the driver along with the failure to disclose such offences in accordance with Middlesbrough Council Private Hire and Hackney Carriage Licensing policy 2018. The driver, in accordance with that policy must notify the Council, in writing, within 7 days of any such offence. The driver failed to notify the Council.
5. Further and/or in the alternative, the driver failed to declare such convictions upon renewal of his Private Hire Driver Licence in June 2018 and the Licensing Officers only became aware of such motoring offences having carried out a check with DVLA on the status of the driver's licence and entitlement to drive.
6. The driver was given an opportunity to provide an explanation to the non-disclosure of

- those motoring offences during the meeting. The driver accepted that he had not informed the Council's Licensing Department of the motoring convictions within 7 days as required by the Policy.
7. The driver provided the explanation of the non-disclosure when renewing his licence, in that he had difficulties in completing the online form on his phone. He stated he had tried to seek help in completing the online form and further stated that upon reading the online form he only read the part relating to criminal convictions and that was the reason he ticked the 'NO' box. Furthermore the driver accepted he had been caught speeding as per offences 8-10.
  8. Having heard the representations, and having due regard to Middlesbrough Council's Private Hire and Hackney Carriage Licencing Policy 2018 and having considered the propensity of the motoring offences of the driver, the Committee came to the conclusion that on the balance of probabilities the driver's Private Hire Vehicle Driver Licence should be revoked.
  9. The driver was advised that if he was aggrieved by the Committee's decision he had 21 days in which to appeal the decision to Teesside Magistrates' Court. Should the driver decide to appeal the decision and the appeal was dismissed, the Council would look to the court for an Order to recover its costs incurred in defending its decision from the driver.

#### **\*\* DECLARATION OF INTEREST**

At this point in the meeting, Councillor S Biswas declared a non-pecuniary interest in relation to the following item and withdrew from the meeting.

#### **4 REVIEW OF PRIVATE HIRE VEHICLE DRIVER LICENCE, REF NO: 11/18.**

The Director of Culture and Communities submitted an exempt report in connection with the review of a Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 11/18, where circumstances had arisen which required special consideration by the Committee.

The driver's legal representative advised Members that, due to unforeseen circumstances, he was unable to represent the driver on this occasion. As such he apologised and requested that the Review of Private Hire Vehicle Driver Licence, Ref 11/18 be deferred until the next meeting of the Committee. The Chair advised the driver, and his legal representative, that the Review would be heard at the next meeting of the Committee regardless of legal representation being present.

**ORDERED:** that consideration of the review of Private Hire Vehicle Driver Licence, Ref 11/18, be deferred to the next meeting of the Licensing Committee to afford the driver adequate legal representation. The driver was advised that the Review would be heard at the next meeting of the Committee regardless of legal representation being present.

\*\* Councillor Biswas returned to the meeting at this point.

#### **5 APPLICATION FOR A PRIVATE HIRE VEHICLE DRIVER LICENCE, REF NO: 28/18**

The Director of Culture and Communities submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 28/18, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, who was in attendance at the meeting, verified his name and address and confirmed he had received a copy of the report.

The Principal Licensing Officer presented the report setting out the circumstances of the case in relation to the medical condition of the applicant, namely having no vision in his left eye. The Principal Licensing Officer highlighted this related to the DVLA's Group 2 medical standards for visual acuity. It was also highlighted that in line with the Department for

Transport guidelines, and as part of its Hackney Carriage and Private Hire Licensing Policy, the Council applied the DVLA Group 2 standards for visual acuity. This was a higher medical standard, applied to drivers of buses and lorries, than for other vehicles due to the amount of time a driver would likely spend at the wheel and having responsibility for passengers and the public.

It was also noted that the Licensing Service had considered 'Grandfather rights', whereby the driver may have been awarded a Group 2 licence had he held one since before 1 January 1991. However, as the driver had held a DVLA licence since 21 January 2013 this option was not open to him.

The applicant was interviewed by a Licensing Officer on 12 July 2018 during which it was noted the applicant had been required to undertake an eye test before being issued with a DVLA provisional licence. It was also noted that applicant passed his driving test followed by the 'Pass Plus Scheme'. The applicant felt that, while he understood the medical requirements as outlined in the report, not being issued a Private Hire Vehicle Driver Licence would have been an act of discrimination by the Council.

The Principal Licensing Officer also brought the Committee's attention to a communication from a DVLA Doctor who had advised the applicant would not meet the Group 2 medical standard and therefore should not be awarded a Private Hire Vehicle Driver Licence.

The applicant was invited to address the Committee and responded to questions from Members and the Council's legal representative.

It was confirmed that there were no further questions and the applicant, and officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew whilst the Committee determined the application.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

**ORDERED:** That the application for a Private Hire Vehicle Driver Licence, Ref 28/18, be refused under Section 51 of the Local Government (Miscellaneous Provision) Act 1976 as the Committee was not satisfied that the applicant was a fit and proper person to hold such a licence for the following reasons:-

1. The Committee carefully considered the application based upon the report and appendices, the representations of the applicant and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018. The matter was considered on its own merits.
2. The driver was advised that he would receive the full decision, considerations and reasons within five working days.
3. All applications for a Private Hire Vehicle Driver Licence were subject to a medical examination to comply with the medical standards set out in Group 2 of the DVLA's Medical Standards Publication ('the standards').
4. The applicant had monocular vision. That was not in dispute. The standards adopted by Middlesbrough Council fell within the principle purposes of Private Hire Licensing Functions. The applicant was provided with the opportunity to make oral representations to support his application and did so. It was the applicant's view that the Committee should have utilised its discretion to depart from the policy in his case.
5. Having heard the representations, and having due regard to Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018, additionally the email representations made by the DVLA Doctor and the standards set down by DVLA's Medical Standards Publication, the Committee saw no reason to depart from the policy as the legitimate aim of adopting such standards into the policy aligned with the aims and objectives of Middlesbrough Council Private Hire and Hackney Carriage Licensing Policy 2018 and as such the application was refused.
6. The applicant was advised that if he was aggrieved by the Committee's decision he had 21 days in which to appeal the decision to Teesside Magistrates' Court. Should

the applicant decide to appeal the decision and the appeal was dismissed, the Council would look to the court for an Order to recover its costs incurred in defending its decision from the applicant.

- 6           **ANY OTHER URGENT ITEMS WHICH IN THE OPINION OF THE CHAIR MAY BE CONSIDERED.**