

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on 3 September 2018.

PRESENT: Councillor J Walker (Chair), Councillor T Higgins (Vice Chair); Councillors Goodchild, Mawston and McCabe.

OFFICERS: J Dixon, A Perriman and S Wearing.

APOLOGIES FOR ABSENCE were submitted on behalf of Councillors Arundale, Biswas, Brady, Harvey, Lewis and D Rooney.

**** DECLARATIONS OF MEMBERS' INTERESTS**

There were no Declarations of Interest made by Members at this point in the meeting.

MINUTES – 30 JULY 2018

The minutes of the previous Licensing Committee, held on 30 July 2018, were submitted and approved as a correct record.

EXCLUSION OF PRESS AND PUBLIC

ORDERED that the press and public be excluded from the meeting for the following items on the grounds that, if present, there would be disclosure to them of exempt information as defined in Paragraphs 1, 2, 3 and 7 of Part 1 of Schedule 12A of the Local Government Act 1972 and that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

**** SUSPENSION OF COUNCIL PROCEDURE RULE NUMBER 5 – ORDER OF BUSINESS**

In accordance with Council Procedure Rule number 5, it was **ORDERED** that the order of business be varied to deal with the agenda items in the following order: 5, 6, 8, 7, the reason being that the drivers/applicants in relation to items 5, 6 and 8 were all legally represented by the same legal representative.

REVIEW – COMBINED HACKNEY CARRIAGE/PRIVATE HIRE VEHICLE DRIVER LICENCE – REF: 11/18

The Director of Culture and Communities submitted an exempt report in connection with the review of Combined Hackney Carriage/Private Hire Vehicle Driver Licence, Ref: 11/18, 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 accompanied by his legal representative, verified his name and address and confirmed that he had received a copy of the report.

The Principal Licensing Officer presented the report and highlighted that the matter was first considered by the Committee on 19 March 2018 due to information received on 12 October 2017 from Durham Constabulary's Child Protection Strategy Team; three motoring offences detailed at 3) to 5) in the report; and a complaint made against the driver following an incident on 22 March 2016. On that occasion, Members deferred making a decision pending further enquiries being made regarding availability of further information in relation to the driver.

The matter was due to be considered by the Licensing Committee on 30 July 2018, however, the driver's legal representative had requested that the matter be adjourned as he was unable to attend. The matter was subsequently deferred and the driver and his legal representative were advised that the matter would be considered at today's meeting regardless of their attendance.

Members were reminded of the background to the case. The driver was first licensed with Middlesbrough Council in August 1999 and first appeared before Members in November 2001 in relation to a number of motoring offences now considered too old to be relevant, and his failure to report offences as required by condition of his licence. On that occasion, the driver retained his licence but was issued with a warning.

The driver next appeared before Members in February 2003 with a new application for a licence following his disqualification from driving in December 2002 as a result of the totting up procedure. He was granted his licence and issued with a warning regarding future conduct.

The driver again appeared before the Licensing Committee in June 2014 in relation to the offences detailed at 1) and 2) in the report; a complaint from a member of the public regarding an incident on 11 March 2012; and an incident on 16 November 2013 witnessed by the Principal Licensing Officer. On that occasion, Members decided to suspend the driver's licence for a period of two weeks and required him to undertake the Driver Improvement Scheme due to his history of motoring offences and poor driving standards.

The driver appeared before the Committee on 19 March 2018 as a result of information provided by Durham Constabulary's Child Protection Strategy Team on 12 October 2017, three further motoring offences and a complaint made against him on 22 March 2016.

Details of the information provided by Durham Constabulary were outlined in the report. The referral informed of concerns regarding domestic violence issues, with concerns dating back to 2013, and advised that Licensing Officers should contact Cleveland Police for information in relation to specific events. Subsequently, a Licensing Enforcement Officer contacted Cleveland Police and was advised that the driver had been involved in two domestic incidents – in 2004 and 2012. No formal action was taken against the driver.

The driver attended an interview with the Licensing Enforcement Officer on 7 November 2017. In response to the allegations made against the driver, he advised that Social Services had recommended he attend a Domestic Violence Awareness Course, however, he had refused to do so as he denied any wrong-doing. A copy of the interview notes was attached at Appendix 1.

In view of the information provided, and the interview on 7 November 2017, the matter was referred to the Council's Local Authority Designated Officer (LADO). Information provided by the LADO was attached at Appendix 2.

On 7 February 2018, the driver advised the Licensing Enforcement Officer, by telephone, that he had enrolled on the Domestic Violence Awareness course and information in relation to the course was attached at Appendix 3.

On 13 February 2018, the Licensing Enforcement Officer spoke to the driver in relation to the motoring offences recorded against him since his last appearance before the Committee in June 2014. The driver provided explanations in relation to the offences, detailed at 3) to 5) in the report. It was noted that the driver had failed to notify the Licensing Office of the offences at 4) and 5).

Furthermore, it was noted that the driver was issued with a written warning regarding a complaint made against him on 22 March 2016.

At the Licensing Committee on 19 March 2018, Members deferred making a decision on the matter pending further information becoming available.

Subsequently, Officers made further enquiries with Middlesbrough Council's LADO and Harbour Support Services.

The Principal Licensing Officer updated that, since the 19 March 2018 meeting, Middlesbrough Council's LADO confirmed that Durham Social Services' involvement with the driver was as a result of care proceedings in respect of his children, initiated by Middlesbrough Council. The driver was permitted to have only indirect contact with his children until he had successfully completed the

Domestic Violence Awareness Course and had been further assessed. Middlesbrough Council's LADO confirmed that the case in respect of the driver was closed on 9 April 2018. There had been no further referrals since that time. In addition Harbour Support Services confirmed that the driver had completed the Harbour Men's Programme and was awarded a certificate of completion, dated 19 July 2018. A copy was attached at Appendix 4. Correspondence was also received from the Harbour Support Service's Monitoring and Evaluation Manager who advised that the driver had presented well in the group sessions that had ran for a 27 week period.

It was further highlighted that the driver had provided explanations, during interview with a Licensing Enforcement Officer on 13 February 2018, regarding the motoring offences recorded against him, detailed at 3) to 5) in the report. The Principal Licensing Officer confirmed that the driver had failed to declare the motoring convictions at 4) and 5) to the Licensing Office at the time of occurrence.

The driver and his legal representative confirmed that the report was an accurate representation of the facts.

The driver's legal representative presented the case in support of the driver and asked the driver a series of questions in relation to the motoring offences at 3) to 5) in the report and the situation regarding his involvement with Social Services and the Harbour Support Service. The driver also responded to questions from Members.

The driver's legal representative summed up his submission on behalf of the driver and it was confirmed that there were no further questions and the driver, his legal representative, 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 Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 11/18, be retained but that the driver be issued with a warning in relation to his future conduct, for the following reasons:-

1. The Committee carefully considered: the review on its own merits; the report and appendices; the representations by the driver and his legal representative; the Council's policy on the relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character ("the Policy") and Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act").
2. The driver was advised that he would receive the full decision, considerations and reasons within five working days.
3. The driver was informed that he would be issued with a warning in respect of his motoring convictions and his failure to report such convictions to the Council in accordance with Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018.
4. The Committee acknowledged that the driver had successfully completed a Domestic Violence Awareness course with Harbour Support Services. This was a 27-week course which the driver had attended weekly, since January 2018 until completion on 19 July 2018, and the Committee considered this to be to the driver's credit.
5. Middlesbrough Council's LADO had confirmed that the case in relation to the driver was closed on 9 April 2018 and there had been no further LADO referrals since that time.
6. There was no right of appeal against a warning being issued, however, should the driver consider the warning to be unlawful he could apply to judicially review the decision. If such an application was unsuccessful the Council would claim its costs in defending its decision.

REVIEW – PRIVATE HIRE VEHICLE DRIVER LICENCE – REF: 29/18

The Director of Culture and Communities submitted an exempt report in connection with the review of Private Hire Vehicle Driver Licence, Ref: 29/18, 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 accompanied by his legal representative, verified his name and address and confirmed that he had received a copy of the report.

The Principal Licensing Officer presented the report and highlighted that the driver was first licensed with Middlesbrough Council in July 2014. He now appeared before Members for review of his licence due to there being 14 penalty points endorsed on his DVLA licence as a result of the convictions at 1) to 3) in the report. It was further highlighted that the driver received a warning from a Licensing Enforcement Officer following an incident on 29 October 2016 during a late night taxi enforcement operation when the driver was found to be driving in excess of the 30 mph speed limit.

The driver was interviewed by a Licensing Enforcement Officer on 2 August 2018 when he confirmed that there were no outstanding matters of which the Council was unaware and provided explanations for the offences at 1) to 3) and the incident on 29 October 2016.

It was highlighted that, on 22 September 2017, the driver successfully completed the Driver Improvement Scheme following a request by Officers that he attend the course due to him accruing nine penalty points on his licence at that time.

The driver and his legal representative confirmed that the report was an accurate representation of the facts.

The driver's legal representative presented the case in support of the driver and asked the driver a series of questions in relation to the motoring offences at 1) to 3) in the report. The driver confirmed that officers had requested his attendance on the Driver Improvement Scheme in September 2017 as a result of the offences at 1) and 2) as he had nine points on his licence at that time. The driver was also asked to explain the circumstances in relation to the most recent speeding offence in April 2018. It was highlighted that the driver had been permitted to retain his DVLA licence by the Court due to circumstances of exceptional hardship should he lose his licence. It was further noted that the driver had declared all of the offences in accordance with the condition on his licence.

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

The driver's legal representative summed up his submission on behalf of the driver and it was confirmed that there were no further questions and the driver, his legal representative, 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 29/18, be revoked, with immediate effect, as the Committee was not satisfied that the driver was a fit and proper person to hold such a licence, for the following reasons:-

1. The Committee considered: the review on its own merits, the report, the representations by the driver and his legal representative, the Council's policy in relation to convictions cautions complaints and driver conduct ("the Policy") and Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act").
2. The driver would be advised of the Committee's full decision, reasons and considerations in writing, within five working days.

3. The Committee decided to revoke the driver's Private Hire Vehicle driver licence with immediate effect under the Act on the grounds of any other reasonable cause and in the interests of public safety.
4. The driver appeared before the Licensing Committee in respect of driving offences dated 30 November 2016, 9 June 2017 and 27 June 2018. The three offences were that of driving in excess of the speed limit (the offences were numbered 1) to 3) in the report provided to the Committee and the driver).
5. The purpose of the review of the Private Hire Vehicle driver licence was on the basis of the three motoring offences recorded against the driver in accordance with Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018. The driver received £100 fine and six penalty points; £100 fine and three penalty points; and £83 fine and five penalty points for the offences respectively. Thus, the driver had a total of 14 'live' penalty points on his licence.
6. Middlesbrough Council's Licensing Policy 2018 stated that if an applicant had between seven and nine live points on their licence for such offences and/or a history of poor driving then the application would be referred to the Licensing Committee who may decide to refuse (revoke) the application (licence). At the very least, the applicant would be required to complete a driver improvement course identified by the Council, at his own expense, and a severe warning would be given that further offences would result in revocation of the licence. Where an applicant had more than nine valid penalty points for such convictions, they must show a period of 12 months free from conviction, caution, reprimand or final warning before their application was considered. Even then the application would be referred to the Licensing Committee and may be refused.
7. The Policy also applied to existing licence holders and reference to 'applicant' should be construed as including reference to an existing licence holder.
8. Representations were made by the driver's legal representative in respect of the circumstances of the latter offence, which was dealt with by a Court appearance of the driver. It was understood, that the driver was allowed to keep his licence by the courts, as a result of mitigating 'exceptional hardship'.
9. The Committee noted the Officer warning as outlined in the report dated 29 October 2016, when the driver was issued with a warning notice.
10. The Committee further noted that the driver had undertaken the Driver Improvement Scheme on 22 September 2017, following the second offence.
11. Having heard the representations, and having due regard to Middlesbrough Council's Policy, the Committee was concerned that despite previous offences of speeding as outlined in the report (numbered 1) and 2)), the Officer Warning and the fact that following these the driver had undertaken a driver improvement course, the driver appeared to have a disregard for the speed limits imposed which resulted in offence number 3). It was also of concern to the Committee that the speed at which the driver was travelling was far in excess of the recognised speed limit.
12. The Committee took the view that the driver continued to show a propensity of committing motoring offences and came to the conclusion that, on the balance of probabilities, the driver's Private Hire Vehicle Driver Licence should be revoked.
13. Further to this, the Committee took the view that the driver's Private Hire Vehicle Driver Licence should be revoked with immediate effect. The reasons for this decision were that they felt it was appropriate in the circumstances and that it was in the interests of public safety to do so. The Committee felt that on balance, having due regard to the propensity and excess speed of the driver, they felt a duty to the public that an immediate revocation was proportionate in this case.

14. 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.

APPLICATION – PRIVATE HIRE VEHICLE DRIVER LICENCE – REF: 31/18

The Director of Culture and Communities submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 31/18, 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 accompanied by his legal representative, verified his name and address and confirmed that 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 detailed at 1) to 3) in the submitted report.

It was highlighted that the applicant was previously licensed with Middlesbrough Council in February 1990. He first appeared before Members for review of his licence in February 2011 following four incidents when he was found to be parked inappropriately in his Hackney Carriage. On that occasion, Members decided to suspend his licence for seven days.

The applicant again appeared before the Committee in June 2017 as a result of the offence detailed at 3). Cleveland Police notified the Licensing Section that, on 7 April 2017, the applicant had been issued with a conditional caution for the offence of soliciting a prostitute. CCTV footage had been provided by the Police in relation to the offence. At that time, the applicant was interviewed in relation to the offence and accepted a caution which required him to attend an awareness course facilitated by Barnardos, in relation to sexual exploitation. It was confirmed that the applicant had attended the course on 10 June 2017.

Following receipt of the above information from Cleveland Police, the applicant's taxi licence was suspended with immediate effect pending consideration of the matter by the Licensing Committee. At the Licensing Committee on 12 June 2017, Members viewed a copy of the CCTV footage of the incident that led to the Police caution. Subsequently, the Committee decided to revoke the applicant's licence with immediate effect. The reasons for the decision were contained within the submitted report.

The applicant now appeared before Members with a fresh application and was interviewed by a Licensing Officer on 31 July 2018 when he provided explanations in relation to the offences at 1) and 2) and made further representations regarding the offence at 3).

The applicant and his legal representative confirmed that the report was an accurate representation of the facts.

The applicant's legal representative presented the case in support of the applicant and asked the applicant a series of questions in relation to offences at 1) to 3) in the report, with particular focus on the most recent offence at 3). The applicant confirmed that he had attended the sexual exploitation awareness course with Barnardos and deeply regretted the offence, providing mitigating circumstances and offering assurances that it was an isolated offence and completely out of character.

With the permission of the Chair, the applicant's legal representative circulated three separate character references in support of the applicant.

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

The applicant's legal representative summed up his submission on behalf of the applicant and it was confirmed that there were no further questions and the applicant, his legal representative, 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 Private Hire Vehicle driver licence, Ref 31/18, be granted, for the following reasons:-

1. The Committee had considered: the application on its own merits, the report, the representations made by the applicant and his legal representative, character references in support of the applicant and the Council's Policy on convictions, cautions and complaints ("the Policy") and Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act").
2. The applicant would be advised of the Committee's full decision, reasons and considerations in writing, within five working days.
3. The Council's Policy guidance on convictions, cautions and complaints states that "the Council takes a strong line in relation to applicants or existing licence holders with convictions for sexual offences. Those with any conviction for a sexual offence will be refused." Having considered the Policy, the Committee decided to depart from the Policy in this case as, having heard the representations from the applicant and his legal representative, believed the offence at 3) to have been an isolated incident and that the applicant was of previous good character. The applicant was remorseful and had explained mitigating circumstances. The applicant had also completed a sexual exploitation awareness course facilitated by Barnardos.

APPLICATION – PRIVATE HIRE VEHICLE DRIVER LICENCE – REF NO: 30/18

The Director of Culture and Communities submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 30/18, 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 that he had received a copy of the report.

The Principal Licensing Officer presented the report setting out the circumstances of the case which related to the applicant's residency in the UK.

It was highlighted that Middlesbrough Council's Private Hire and Taxi Licensing Policy in relation to the licensing of drivers set out procedures for dealing with applications when an applicant had previously resided abroad. The relevant sections of the Policy from 208 to 214 were set out in the report.

Members were advised that where an applicant had not been resident in the UK for the past five years, as well as an enhanced DBS disclosure being required, applicants were required to provide a Certificate of Good Conduct, or equivalent, translated into English, from each country where they had been resident/domiciled.

The applicant's application revealed that he had not been resident in the UK for a full five year period, having arrived in the UK in February 2014. Therefore, the applicant was requested to provide a Certificate of Good Conduct from his country of origin, in accordance with the Council's Policy.

The applicant informed officers that he was unable to provide such a certificate and was subsequently interviewed by a Licensing Officer on 3 August 2018 to explain the reasons for this. The circumstances were detailed in the submitted report, however, in summary, the applicant had sought asylum in the UK and was given refugee status at the end of 2014.

The applicant advised that he had worked as an unpaid volunteer in a coffee shop from June 2014 until April 2017. The manager of the coffee shop provided a reference in relation to the applicant and this was attached at Appendix 1.

In order to fulfil sections 184 and 192 of the Council's Policy in relation to immigration status, the applicant provided the relevant documentation to satisfy that he had leave to remain, having refugee status and a right to work in the UK, although his current permit expires on 30 December 2019. Refugee status currently means five years leave to remain in the UK. After five years of refugee status, a person could apply for indefinite leave to remain (ILR), known as settled status and after one year of ILR, a person could apply for British Citizenship.

Members, therefore, were asked to consider whether they were satisfied to grant the application, having regard to the particular circumstances of the case and, if so, to note that the licence could only be issued for the period up to 30 December 2019 in the first instance in view of the time limit on his current right to work status. At that time, the applicant would again need to show he had a right to work by producing a new residency permit.

The applicant confirmed that the report was an accurate representation of the facts and was invited to present his case in support of his application. The applicant also responded to questions from Members of the Committee.

It was confirmed that there were no further questions and the applicant, his legal representative, 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 Private Hire Vehicle driver licence, Ref 30/18, be granted, for the following reasons:-

1. The Committee had considered: the application on its own merits, the report and appendix, the representations made by the applicant and the Council's Policy on convictions, cautions and complaints and Private Hire and Hackney Carriage Taxi Licensing ("the Policy") and Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act").
2. The applicant would be advised of the Committee's full decision, reasons and considerations in writing, within five working days.
3. Having had regard to the relevant sections of the Council's policy in relation to the licensing of drivers where an applicant had previously resided abroad, and immigration status, the Committee was satisfied that the applicant was a fit and proper person to hold a Private Hire Vehicle driver licence.
4. The Committee highlighted that the Private Hire Vehicle driver licence would be issued for the period up to 30 December 2019, subject to the applicant's indefinite leave to remain in the UK.