

**LICENSING COMMITTEE**

A meeting of the Licensing Committee was held on 30 September 2019.

**PRESENT:** Councillors Arundale (Chair); Waters (Vice Chair); Councillors; Bell, Dean, Goodchild, Jones, Lewis, McCabe, Rooney and Sands and Nugent (As Substitute).

**OFFICERS:** S. Bonner, C. Cunningham and J. McNally.

**APOLOGIES FOR ABSENCE** Councillors; Higgins, J A Walker, Mawston and Smith..

**DECLARATIONS OF INTERESTS**

None were declared at this point in the meeting.

19/19 **MINUTES OF THE PREVIOUS MEETING OF THE LICENSING COMMITTEE HELD ON 29 JULY 2019**

The Minutes for the Licensing committee of 29 July 2019 were submitted and accepted as a true record.

19/20 **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 NO. 5 - ORDER OF BUSINESS**

**ORDERED:** that in accordance with the 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.

19/21 **APPLICATION FOR A COMBINED HACKNEY CARRIAGE & PRIVATE HIRE DRIVER LICENCE - REF: 19/19**

The Director of Culture and Communities submitted an exempt report in connection with the application of a Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 19/19, 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 and understood its contents.

The Licensing Manager presented a summary of the report. The Committee was advised that the Applicant had previously been licensed by the Council between 1989 and 15 May 2017 at which point the Licensing Committee decided to revoke the Applicant's Hackney Carriage Licence.

The Committee's decision to revoke the Applicant's Hackney Carriage Licence in 2017 was in response to the Applicant's admission of having had engaged in sexual activity with a 17 year old female passenger.

The Applicant also appeared before the Committee on several occasions including in April 2002 due to motoring convictions and nine penalty points being endorsed on his licence; in February 2008 following a report that he had smoked in his vehicle; in July 2009 following his failure to report a driving conviction within 7 days and November 2013 after breaching Hackney Carriage Byelaws for double parking and plying for hire outside a nightclub.

The Committee also heard that in February 2016 Cleveland Police formally notified the Council that the Applicant was involved in investigations into historical allegations of rape dating from February 2001. After assisting the Police with their enquiries the Council was informed that no further Police action would be taken on this matter.

The Committee also heard that during this process, the Applicant's Hackney Carriage Licence was suspended and that the Applicant appeared before the Licensing Committee on 15 May 2017 during which the Committee considered information provided by Cleveland Police which was provided in Appendix 1 of the report.

The decision of the Committee was to revoke the Applicant's Hackney Carriage Vehicle Licence and a copy of that decision was provided in Appendix 2 of the report.

The Committee also heard that the Applicant did not appeal the decision to revoke his licence in 2017.

The Applicant was interviewed on 5 September 2019 in relation to his application for a Combined Hackney Carriage and Private Hire Driver Licence at which the Applicant confirmed the information contained in the Committee's report was correct. The Applicant also confirmed that he had been driving as a PSV minibus driver for several companies without incident or complaint.

The Applicant confirmed that the report was an accurate representation of the facts.

The Applicant presented his version of events and responded to questions from Members, the Council's legal representative and the Licensing Manager.

It was confirmed there were no further questions for the Applicant and at this point the Applicant and the Licensing Manager withdrew from the meeting while the Committee considered the review.

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

**ORDERED** that the application for a Combined Hackney Carriage and Private Hire Vehicle Licence be refused.

Under Sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act") Middlesbrough Council cannot grant a Licence to drive hackney carriage or private hire vehicles unless it is satisfied the Applicant is a fit and proper person.

The Licensing Committee at its meeting on the 30 September 2019, after careful consideration of all of the information, decided to refuse to grant the Applicant a Licence to drive hackney carriage and private hire vehicles because it was not satisfied the Applicant was a fit and proper person to be granted such a licence.

In making its decision, the Committee took into consideration the Application, Sections 51 and 59 of the Act, Middlesbrough Council's Private Hire and Hackney Carriage Policy 2018 ("the Policy"), the report, appendices to the report and the representations made by the Applicant. The Application was judged on its own merits.

The Applicant's previous hackney carriage driver's licence had been revoked by the Licensing Committee the 15 May 2017. The reasons for the revocation were set out in the letter dated 17 May 2017 which was Appendix 2 to the report and is attached to this decision.

The Application was made approximately only two years since that revocation.

1. In August 2017, just a couple of months after his revocation, the Applicant stated he had been granted a PCV licence from the DVLA to drive mini buses operated by local firms.
2. The Committee put no weight on the fact that the Applicant was granted a PCV

- licence. The Applicant knew he would not have to disclose the reasons why his previous licence was revoked to the DVLA. Therefore, the body granting the licence did not have the information that was before this Committee.
3. The Applicant told the Committee that he did not appeal the decision to revoke his licence because he regretted his actions, took it as a punishment and applied later after a period of time had lapsed. Yet, despite these assertions, he applied for a PCV licence just months after being revoked.
  4. The Applicant stated he had worked for private hire firms in Middlesbrough since he was granted his PCV Licence. The Committee decided that the fact that he had been working under a licence, which was granted without any knowledge of his previous conduct, did not detract from his serious breach of trust when he was a licensed hackney carriage driver.
  5. The Applicant's Licence was revoked because the Applicant had sex with a passenger in his hackney carriage vehicle and for the detailed reasons given by the Committee on the 15 May 2017.
  6. The Applicant was identified through DNA in 2016 as the person who allegedly sexually assaulted his 17 year old passenger in 2001. No further action was taken by the police.
  7. The Committee considered the Applicant seriously abused his position of trust and his conduct was wholly unsuitable and unacceptable. The Applicant picked up a female from a nightclub, took her first to what he believed was her home, then took her to a secluded area, got out of the driver's seat, went to the back seat and had sex with his passenger.
  8. The passenger was vulnerable, she was 17, under the influence of alcohol and travelling alone in the early hours of the morning. At the time the Applicant was much older than his passenger being approximately 35/36.
  9. The Applicant denied rape but admitted having sex with his passenger. The Applicant in an interview in 2017 told the Licensing Officer that it was the passenger who instigated the sexual encounter and the details of his version were set out in the report.
  10. The police informed the Council that the allegation was reported by the passenger the following day in 2001 by the passenger. The passenger stated she was drunk and had taken a taxi to her home. She recalled the driver pulled up near Laycock Park, that somehow she and the driver were on the back seat and intercourse had occurred. She did not recall saying anything but recalled pushing at his shoulders then she was returned home and she fell asleep. The next day after discussing the incident with her mother she encouraged her to report the incident. She admitted she could not recall if she agreed to sex but feels she wasn't forced into the rear of the taxi. She stated that as a lesbian she did not think she could have consented but could not honestly recall and did not want to go to court because she would not be able to recognise the male.
  11. On reading the information it appeared believable as the passenger's recollection and is at odds with the Applicant's explanations. The passenger more or less maintains her position when contacted 15 years later.
  12. The Applicant's hackney carriage licence was not otherwise without incident. In 2002, 2008, 2009 and 2013 the Applicant received warnings for driving offences and breaches of the rules governing his licence including a failure to disclose a conviction.
  13. The Applicant stated he regretted his conduct, that he has a no convictions and claimed it was the only time it had happened during his licence that he had held for 27 years.
  14. However, the Committee decided that this was not a good enough reason to grant the licence. Its role was to protect the public and ensure so far as possible passengers are safe. Even though the incident occurred in 2001, the Applicant's conduct was a serious abuse of a position of trust and the Applicant was not safe nor suitable to be licensed.
  15. If the Applicant was aggrieved by the decision he had 21 days from the date of service of the Notice of the Decision in which to appeal to the Teesside Justice Centre, Teesside Magistrates Court. If the Applicant decided to appeal the decision and the appeal was dismissed, the Council would apply to the Court for an Order for the Applicant to pay the Council's costs incurred in defending the Committee's decision from the Applicant.

**19/22 REVIEW OF PRIVATE HIRE VEHICLE DRIVER LICENCE - REF: 20/19**

The Director of Culture and Communities submitted an exempt report in connection with the review of a Private Hire Vehicle Licence, Ref 20/19, 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 and accompanied by his wife, verified his name and address and confirmed that he had received a copy of the report and understood its contents.

The Licensing Manager presented a summary of the report. The report outlined that the Driver had been licenced since November 2018 and was due to expire 31 October 2019.

The Committee was advised that the Driver appeared before Members because of concerns about his driving standards, specifically in relation to an incident on the 7 January resulting in a complaint being raised by members of the public and a traffic incident on 10 June 2019.

The incident of 7 January concerned the Driver approaching the rear of the complainant's vehicle at speed while travelling along the A19. The complainants felt the Driver did not leave enough space between his and their vehicle while travelling at 70mph during an overtaking manoeuvre.

The complainants were traveling within the speed limit and, after completing their overtake manoeuvre, the Driver sped past them in excess of the speed limit.

The Driver was subsequently interviewed by a Licensing Enforcement Officer on 28 January during which the Driver stated he could not recall the incident and that he always drove safely. It was decided, because of the two witness accounts, to issue the Driver with a written warning.

When interviewed on 29 August in relation to another incident the Driver stated he did not realise he could have appealed this decision as he would have done so.

On 12 June Cleveland Police disclosed to the Licensing Service that the Driver was involved in an incident on 10 June involving a collision with a motorcycle on Haverton Hill Road. The Driver was arrested for the alleged offence of causing serious injury by dangerous driving which, after questioning by the Police, was changed to driving without due care and attention for which he received 5 penalty points and a fine of £195. The details of the Police disclosure were detailed at Appendix 1 of the report.

Based on this disclosure, and under the Council's Scheme of delegation, the Licensing Manager decided to suspend the Driver's Private Hire Vehicle Licence with immediate effect in the interests of public safety.

The Driver was subsequently interviewed by a Licensing Enforcement Officer on 29 August 2019 during which the Driver took full responsibility for the incident, apologised and stated that he should have checked his blind spot. The Driver also stated that he cooperated fully with Police investigations and remained at the scene to assist the motorcyclist as much as he could.

The Driver confirmed that the report was an accurate representation of the facts.

The Driver presented his version of events on 10 June 2019 and responded to questions from Members, the Council's legal representative and the Licensing Manager.

It was confirmed there were no further questions for the Driver and at the point the Driver, his wife and the Licensing Manager withdrew from the meeting while the Committee considered the review.

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

**ORDERED** that the suspension to the Driver's Private Hire Vehicle Driver Licence be removed and the Driver attend a Driver Improvement Scheme approved by the Council at his own expense which must be completed satisfactorily within three months of the Notice of the decision.

1. The Committee considered the review on its merits, it considered the report, information and representations made to the Committee. It considered Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 ("the Act") and Middlesbrough Council Private Hire and Hackney Carriage Licensing Policy 2018 ("the Policy").
2. The Council upheld a complaint that the Driver was driving unsafely on the 7 January 2019 for which he received a warning.
3. The Driver was suspended with immediate effect under Section 61 of the Act after the Council received notification from the police on the 12 June 2019 that on the 10 June 2019 the Driver had been arrested for the offence of causing serious injury by dangerous driving. After investigation by the police the charge was reduced to that of driving without due care and attention. The Driver was convicted of this offence on the 13 August 2019 and received five penalty points together with a fine.
4. The Committee was seriously concerned that over a short period of time since the Driver was granted on the 29 November 2018 the Driver had driven unsafely by speeding and caused an accident which resulted in a person being seriously injured.
5. The suspension was issued in order to protect the public in accordance with the Policy as the offence was that of dangerous driving and the Driver had a history of unsafe driving over a very short period of time.
6. The Committee decided to remove the suspension as it considered a suspension since June to the date of the Committee being the 30 September 2019 was a sufficient period to deter the Driver from driving unsafely in the future.
7. However, because of the serious concern of the Driver's driving standards the Committee decided, in order to improve his driving skills and to ensure the safety of the travelling public, the Driver must satisfactorily complete a Driver Improvement Scheme within three months.
8. There was no right of appeal against the Decision of the Licensing Committee to require the Driver to attend a Driver Improvement Scheme. If the Driver could prove the decision or the process was unlawful he may be in a position to apply for permission to judicially review the Council. However, if unsuccessful the Council would apply for its costs incurred in defending its decision to be paid by the Driver.