

**LICENSING COMMITTEE**

A meeting of the Licensing Committee was held on 21 October 2019.

**PRESENT:** Councillors R Arundale (Chair), A Waters (Vice Chair), S Dean, J Goodchild, T Higgins, D Jones, L Lewis, E Polano, D Rooney and M L Smiles and J A Walker.

**PRESENT AS  
OBSERVERS:** J McNally - Democratic Services  
S Morris - Licensing Department

**OFFICERS:** C Cunningham, J Dixon and T Hodgkinson.

**APOLOGIES FOR ABSENCE** Councillor A Bell, Councillor D McCabe, Councillor R M Sands.

**DECLARATIONS OF INTERESTS**

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

1 **MINUTES OF THE PREVIOUS MEETING OF THE LICENSING COMMITTEE HELD ON 30 SEPTEMBER 2019.**

The minutes of the previous meeting of the Licensing Committee held on 30 September 2019 were submitted and approved as a correct record.

2 **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.

3 **APPLICATION FOR A PRIVATE HIRE DRIVER LICENCE - REF: 21/19**

The Director of Culture and Communities submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence, Ref: 21/19, 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, 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 information contained within the Council's Private Hire and Taxi Licensing Policy in relation to the procedures for dealing with applications where an applicant had previously resided abroad.

It was highlighted that where an applicant had not been resident in the UK for the past five years, an enhanced DBS disclosure in itself would usually be insufficient to satisfy the Council that the applicant was a fit and proper person as the DBS did not routinely provide criminal record information from non-UK countries. In such cases, applicants were required to provide a Certificate of Good Conduct, or equivalent document, translated into English, from each country where they had resided/been domiciled.

Upon receiving the applicant's application for a Private Hire Vehicle Driver licence, it was revealed that he had not been resident in the UK for a full five-year period &ndash; having arrived in the UK on 7 December 2015 with his family. Whilst the applicant's DBS disclosure certificate revealed no previous convictions, he was requested to provide a Certificate of Good Conduct from his country of origin, in line with the Council's policy.

The applicant advised officers that he was unable to provide such a certificate as he was seeking asylum in the UK and explained the circumstances during an interview with a

Licensing Enforcement Officer on 4 October 2019.

The applicant provided relevant documentation to confirm that he had leave to remain, having refugee status, and a right to work in the UK until 13 January 2022.

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

The applicant was invited to present his case in support of his application and responded to questions from Members, the Council's legal representative and the Licensing Manager.

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 21/19, be granted for the following reasons:-

1. Under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 ('the Act'), the Licensing Committee could not grant a licence to drive Private Hire Vehicles unless it was satisfied that the applicant was a fit and proper person.
2. The Committee decided to grant the applicant a licence to drive Private Hire Vehicles until 12 January 2022 for the following reasons:-
3. The applicant was advised that he would receive the full decision, considerations and reasons within five working days.
4. The Committee carefully considered: the application on its own merits; the report and representations made by the applicant; Section 51 of the Act; and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018 ('the Policy').
5. The decision was outside of the Policy, however, on this particular occasion the Committee considered there were good reasons to depart from it.
6. The Policy required an applicant who had not been resident in the UK for five years to provide a Certificate of Good Conduct or equivalent document from the Country where they had been domiciled/resided, translated into English. If an applicant was unable provide a Certificate of Good Conduct or equivalent document the application may be refused.
7. The applicant had been resident in England for nearly four years, his enhanced DBS check was clear but he was not in a position to obtain a Certificate of Good Conduct or equivalent from the Iraq Embassy because he had fled the country and resided in England on asylum.
8. The Committee decided to depart from its Policy because it considered the applicant to be credible, trustworthy and reliable. The Committee considered the applicant was contributing to society, he had learnt English, and as soon as he was given permission, sought out employment and had been employed as a pizza delivery driver for a long period. The Committee considered it commendable that the applicant wanted to continue to work to earn income as a private hire driver to independently support his family.
9. The licence was granted for a limited period, in view that the applicant's right to work status would cease on 13 January 2022, however, it was expected after that time the applicant would apply for indefinite leave to remain and thereafter British Citizenship.
10. The applicant confirmed he had no criminal matters against him during his residence in Iraq and the Committee considered the reasons for both asylum and not being in a position to obtain a Certificate of Good Conduct were sound. Although outside of the five year period required by the Policy, the Committee considered the applicant to be safe and suitable to be licensed to drive private hire vehicles.

The Director of Culture and Communities submitted an exempt report in connection the review of Private Hire Vehicle Driver Licence, Ref: 23/19, 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, 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 was first licensed with Middlesbrough Council in August 2017. At the time that the driver first applied for his licence, the Driving Standards Agency (the organisation the Council approved to assess driving standards) withdrew the provision of the test. As a result, the Council temporarily amended its policy and application process to allow licences to be granted to new applicants who were unable to access the DSA taxi test until a suitable replacement was found. Once an alternative test was found, those drivers issued with a licence without undertaking the assessment were afforded 12 months to complete the new assessment.

The driver now appeared before Members due to concerns regarding his driving standards and his level of spoken English. The Licensing Manager confirmed that the driver currently had six penalty points on his DVLA licence and that complaints from members of the public had been made, in relation to the driver's driving standards and understanding of English, to the Council and to his operator.

The driver was interviewed by a Licensing Enforcement Officer on 1 October 2019 when he provided an explanation for the offence detailed at 1) in the submitted report and the complaints/incidents detailed at 2) to 4). He also confirmed that there were no outstanding matters of which the Council was unaware.

On 11 April 2018, the Principal Licensing Officer, under delegated authority, suspended the driver's licence with immediate effect until such time that he successfully completed a driving assessment course and the matter was considered by Members.

The driver successfully completed the approved driving assessment course on 21 June 2018, however, Officers still had concerns regarding his driving standards and were not satisfied that he possessed a reasonable level of spoken English in order to fulfil his duties as a professional private hire vehicle driver. He was advised by the Principal Licensing Officer that the suspension of his licence would remain in place until he had successfully completed the Driver Improvement Scheme and successfully completed an English for Speakers of Other Languages course (ESOL).

The driver completed the Driver Improvement Scheme on 23 August 2018. A copy of the assessment was attached at Appendix 1. The instructor recommended that the driver undertake further training. Officers were unaware as to whether the driver had completed any advanced driving tuition, however, he again completed the Driver Improvement Scheme on 17 September 2019. A copy of the assessment was attached at Appendix 2.

The driver completed his ESOL course in July 2019 and his results were attached at Appendix 3. It was noted that the Council's records showed that the driver had completed other ESOL courses in 2010, 2011, and 2013 – copies of certificates were attached at Appendix 4.

The driver confirmed that the report was an accurate representation of the facts. The driver was invited to address the Committee in support of his case and he responded to questions from Members, the Council's legal representative and Licensing Manager.

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 23/19, be revoked, with immediate effect, for the following reasons:-

1. Under Section 61 of the Local Government Miscellaneous Provisions Act 1976 ('the Act') the Committee could suspend or revoke the licence of a driver of a private hire and hackney carriage vehicle for any reasonable cause. If it appeared to be in the interests of public safety the Committee could decide that such a suspension or revocation was to have immediate effect.
2. Following careful consideration of all the information the Licensing Committee decided to revoke the driver's Private Hire Vehicle driver licence with immediate effect under Section 61(b) and (2B) of the Act on the grounds of any other reasonable cause, for the following reasons:-
3. The applicant was advised that he would receive the full decision, considerations and reasons within five working days.
4. The Committee carefully considered: the review on its own merits; the report and appendices; the representations made by the driver; Section 61 of the Act; and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018 ('the Policy').
5. The driver's Private Hire Vehicle driver licence was granted on 11 August 2017. The Council and the driver's operator had received complaints about the driver's standard of driving, lack of knowledge of the area and lack of ability to understand or communicate in English. There had been six incidents of complaint.
6. On 23 February 2018 a passenger complained that the driver did not know where James Cook Hospital was and his driving was substandard.
7. On 24 February 2018 Licensing Officers witnessed the driver driving a Private Hire Vehicle erratically in an unsafe manner and appeared not to be in control of his vehicle, swerving from side to side and mounting a pavement. The driver's excuse was that he was following his Sat Nav and did not know the location of where to pick up his passenger. The officer gave advice that it was unsafe for him to divert his attention from the road and was concerned at the driver's command of English.
8. A passenger stated that on 10 March 2018 the driver was unable to use his Sat Nav and the passenger had to direct the driver. The driver appeared not to take instruction and carried out an unsafe manoeuvre at traffic lights, drove through the central reservation and almost collided with a bollard. The driver accepted at this stage he needed to concentrate on his driving.
9. On 29 March 2018 a complaint was received that, on one occasion, the driver had been abrupt, confused and had little knowledge of the local area. Then on a second occasion the driver had driven hesitantly, had a near miss with a vehicle and needed directions.
10. On 4 April 2018 a passenger claimed the driver did not know much English, could not follow the directions of a Sat Nav, in parts of the journey was speeding, had mounted a kerb causing the passenger injury.
11. The complaints showed a pattern of unsafe driving, failure to understand instruction and a lack of understanding of the English Language.
12. On 21 June 2018 the driver completed an approved driving assessment course. Then on 23 August 2018 the driver completed a Driver Improvement Course. There were specific areas of driving that needed improvement. In addition, the comments made by the examiner concerned the Committee in relation to the standard of driving. The examiner recommended that the driver undertake further training with an approved instructor. However, the driver confirmed to the Committee that he had not engaged in any driving lessons etc to improve his driving.
13. A recent Driver Improvement Course was completed on 17 September 2019, which showed the driver's standards had seriously deteriorated even further. Ten areas required improvement and the risk assessment carried out was that the driver had many driving weaknesses with areas of high risk. The assessor had to actually intervene at one stage because he was in the wrong lane despite clear road markings. He failed to observe bus lane times, used incorrect signalling, failed to observe changes in traffic situations which meant late braking and a risk to trailer passengers, failed to identify the flow of roundabouts and almost missed junctions.
14. In addition to the above incidents of complaint the driver was convicted on 13 July 2019 of an offence of failing to provide driver information following the Police notifying him that his vehicle was speeding at Riverside Park. The driver attempted to deny the offence and claimed his licence plate had been stolen, however, the Committee could

- not and would not go behind this conviction.
15. The Committee considered, as a result of the incidents and the responses given to officers and the Committee, the driver had insufficient understanding of English to be a licensed driver. This was despite attending ESOL courses in 2010, 2011, 2013 and recently in July 2019. It was revealed at Committee that the driver had failed part of the course in 2019.
  16. In addition to his unsafe driving the driver breached a condition of his licence when he failed to declare the conviction on 13 July 2019.
  17. The Committee noted the Principal Licensing Officer had suspended his licence in order to protect the public during the period until he could satisfactorily complete a driver improvement course and his licence could be reviewed by the Licensing Committee.
  18. The Committee noted the driver asked for another opportunity but the Committee considered him to be unsafe and a risk to the travelling public. The Committee's overriding duty was to protect the public and because public safety was at risk it decided to revoke the licence and that the revocation was to have immediate effect.
  19. The Committee could not be satisfied that the driver was safe or suitable to be licensed, he was an unsafe driver, he had committed an offence of failing to give information to the Police, he failed to inform the licensing office of this conviction, he could not take or understand direction, had insufficient knowledge of the local area and insufficient language skills in order to carry out the profession of being a licensed driver.
  20. The decision was in accordance with the Policy as, although he currently only had six penalty points on his licence, there was a continued pattern of unsafe driving which warranted revocation. Even following ESOL assessments the driver's level of English demonstrated he was unable to professionally provide the service and, whilst licensed, failed to comply with his conditions.
  21. 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.

#### 5 **REVIEW OF A PRIVATE HIRE DRIVER LICENCE - REF: 24/19**

The Director of Culture and Communities submitted an exempt report in connection the review of Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref: 24/19, where circumstances had arisen which required special consideration by the Committee.

The Licensing Manager advised that the driver's legal representative had requested that consideration of the matter be deferred as he was unable to attend to represent the driver due to other commitments.

**ORDERED** that consideration of the review of Combined Hackney Carriage and Private Hire Vehicle Driver licence, Ref 24/19, be deferred to the next meeting of the Licensing Committee to afford the driver's legal representative the opportunity to attend.

#### 6 **REVIEW OF A COMBINED HACKNEY CARRIAGE & PRIVATE HIRE DRIVER LICENCE - REF: 22/19**

The Director of Culture and Communities submitted an exempt report in connection the review of Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref: 22/19, where circumstances had arisen which required special consideration by the Committee.

The Licensing Manager advised that the driver's legal representative had requested that consideration of the matter be deferred as he was unable to attend to represent the driver due to other commitments.

**ORDERED** that consideration of the review of Combined Hackney Carriage and Private Hire Vehicle Driver licence, Ref 22/19, be deferred to the next meeting of the Licensing Committee to afford the driver's legal representative the opportunity to attend.

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

With the permission of the Chair, Members of the Committee held a discussion around concerns in relation to ensuring that drivers had a good level of understanding and speaking English.

The Licensing Manager explained the current procedures and processes that were in place for testing applicants. Such processes needed to remain for the purposes of efficiency, however, the Licensing Manager agreed to explore ways of strengthening the current processes to ensure that drivers had a good understanding and command of English.

**NOTED**