

LICENSING COMMITTEE

Date: Monday 21st September, 2020
Time: 1.00 pm
Venue: Virtual Meeting

AGENDA

Please note: this is a virtual meeting.

The meeting will be live-streamed via the Council's Youtube channel at 1.00 pm on Monday 21st September, 2020

1. Apologies for Absence
2. Declarations of Interest
3. Minutes- Licensing Committee held 13 July 2020 3 - 10
4. 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.

Report of the Director of Adult Social Care and Health Integration

5. Application for a Private Hire Vehicle Driver Licence - Ref No: 03/21 11 - 44

Charlotte Benjamin
Director of Legal and Governance Services

Town Hall
Middlesbrough
Friday 11 September 2020

MEMBERSHIP

Councillors R Arundale (Chair), A Waters (Vice-Chair), A Bell, S Dean, J Goodchild, T Higgins, S Hill, D Jones, L Lewis, E Polano, D Rooney, R Sands, M Smiles and J Walker

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Joanne Dixon / Scott Bonner, 01642 729713 / 01642 729708, joanne_dixon@middlesbrough.gov.uk / scott_bonner@middlesbrough.gov.uk

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on 13 July 2020.

PRESENT: Councillor Arundale (Chair), Councillor Waters (Vice Chair); Councillors: Higgins, Hill, Jones, Lewis, Polano, Rooney and Smiles.

OFFICERS: S Bonner, A Cooper, C Cunningham, J Dixon, T Hodgkinson and Z Manders.

APOLOGIES FOR ABSENCE were submitted on behalf of Councillors Bell, Dean, Goodchild, Sands and J Walker.

**** DECLARATIONS OF MEMBERS' INTERESTS**

Name of Councillor	Type of Interest	Item
Councillor R Arundale	Non-pecuniary	Agenda Item 4 - Application to voluntarily register land at Acklam Meadows as a Village Green
Councillor M Smiles	Non-pecuniary	Agenda Item 4 - Application to voluntarily register land at Acklam Meadows as a Village Green
Councillor A Waters	Non-pecuniary	Agenda Item 4 - Application to voluntarily register land at Acklam Meadows as a Village Green

MINUTES OF THE PREVIOUS MEETING OF THE LICENSING COMMITTEE HELD ON 8 JUNE 2020

The minutes of the previous meeting of the Licensing Committee held on 8 June 2020 were submitted and approved as a correct record.

**** 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, any other item which, in the opinion of the Chair, was urgent due to the timescales involved, as the next item of business.

SAFETY OF SPORTS GROUNDS CERTIFICATE - RIVERSIDE STADIUM

The Environmental Services Manager submitted a report seeking Members approval to the re-issue of the General Safety Certificate for the forthcoming football season 2020/21.

It was highlighted that the Safety of Sports Grounds Act 1975 established the principle that a sports ground accommodating more than 10,000 spectators required a Safety Certificate containing such terms and conditions as the Local Authority considered necessary or expedient to secure reasonable safety at the sports ground.

Members were advised that the current approved permitted number of spectators for the Riverside Stadium was up to 34,000 and that there had been no structural changes to the Stadium.

The Safety Advisory Group (SAG) for the Riverside Stadium, had met on 18 June 2020 and had recommended renewal on the current terms with the exception of capacity.

Appendix A to the submitted report provided details of the procedures implemented in respect of Covid-19 and it was highlighted that football matches had commenced without spectators.

The Committee was requested to approve the re-issue of the General Safety Certificate for the forthcoming season with a spectator capacity of up to 34,000. It was also recommended that the Environmental Services Manager, or his representative, be authorised to re-issue the Certificate, as outlined.

ORDERED that approval be given to re-issue the General Safety Certificate in respect of the Riverside Stadium for the forthcoming football season 2020/21 with a spectator capacity of up to 34,000 and that the Environmental Services Manager, or his representative, be authorised to re-issue the Certificate, as outlined.

**** DECLARATIONS OF INTEREST**

Councillors Arundale, Smiles and Waters each declared a non-pecuniary interest in the following item. Councillor Arundale had previously expressed support for the application and both Councillors Smiles and Waters were Members of the Council's Executive. Each of the Councillors withdrew from the meeting at this point in the meeting.

**** APPOINTMENT OF CHAIR PRO-TEM**

As both the Chair, Councillor Arundale, and Vice Chair, Councillor Waters had declared an interest in the following item, nominations were sought for a Chair pro-tem.

ORDERED that Councillor Higgins be appointed as Chair Pro-tem.

APPLICATION TO VOLUNTARILY REGISTER LAND AS A VILLAGE GREEN – ACKLAM MEADOWS, NEWFIELD CRESCENT, MIDDLESBROUGH

The Director of Legal and Governance Services submitted a report seeking the Committee's approval to register land at Acklam Meadows, Newfield Crescent, Middlesbrough, as a village green.

It was highlighted that the decision to approve an application to register such land was not an officer decision and there was no provision within the Officer Scheme of Delegation.

The Committee was informed that the Newfield Crescent site, comprising of 4.4 hectares (10.88 acres), was owned by Middlesbrough Council and used as an informal recreation space. It formed a valuable amenity area connecting two key open 'green' corridors.

The site was allocated for residential development in the Local Plan Preferred Options document (May 2018), however, following public consultation a decision was taken to remove the allocation and to protect the land as Local Greenspace. Subsequently, a report seeking approval to make the relevant application for voluntary designation of the site as a Village Green, was presented to, and approved by, the Executive on 21 January 2020.

The submitted report sought the Committee's approval to register the land as a Village Green, which would protect it in perpetuity from development. The application was made in accordance with the provisions 15(8) of the Common Land Act 2006. As the registration was sought voluntarily, the freehold of the land would remain with the Council.

A copy of the application form was attached at Appendix 1 to the submitted report, however, a revised copy had been circulated to Members of the Committee prior to the meeting as the original form was unsigned. Appendix 2 to the submitted report showed a plan of the land in question. A second plan was circulated to Members prior to the meeting and it was clarified that this showed the neighbourhood areas that the land served.

ORDERED that the application to voluntarily register the land at Acklam Meadows, Newfield

Crescent, Middlesbrough, as a Village Green, be approved.

**** CHAIR IN THE CHAIR**

At this point in the meeting, Councillors Arundale, Smiles and Waters returned to the meeting and Councillor Arundale resumed the Chair.

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.

REVIEW – COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE – REF: 02/21

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with the review of Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref: 02/21, 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 was in attendance at the meeting and 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 which outlined the details of the review.

It was highlighted that the driver was first licensed with Middlesbrough Council in July 1981 and had appeared before Members on a number of occasions previously:-

- May 1997
- June 2004
- July 2013
- December 2016

A copy of the report submitted to the Licensing Committee in relation to the driver's last appearance, in December 2016, was attached at Appendix 1 to the submitted report. It provided details of the driver's previous Committee appearances (dates listed above) and the details of the December 2016 review.

The driver now appeared before Members in relation to the convictions listed at 8) to 11) in the submitted report. He was interviewed by a Licensing Enforcement Officer on 25 June 2020 when he confirmed the explanations previously provided for the offences at 1) to 7) and provided explanations in relation to the offences at 8) to 11).

It was highlighted that the Licensing Committee had revoked the driver's licence in June 2004. The driver subsequently appealed the decision to the Magistrates Court and the Council's decision was upheld, however, the driver went on to appeal to the Crown Court and the decision to revoke was overturned.

Full details of the driver's explanations for the offences 8) to 11) were contained within the report and it was noted that each offence involved driving with excess speed. In relation to the offence detailed at 11), the driver was automatically referred to Court as he already had nine penalty points on his DVLA licence. The Court permitted him to retain his licence as he had pleaded exceptional hardship.

The driver had failed to report the offences at 8) to 11), as required by condition on his licence, and had stated that he had not realised the offences had to be reported unless he had nine or 12 penalty points. The points were discovered by Licensing Officers whilst carrying out annual driving

licence checks.

Members were also asked to note that the Committee had previously reiterated the condition regarding reporting offences, to the driver. A copy of the warning issued to the driver in December 2016 was attached at Appendix 2.

The Licensing Manager further highlighted that, following his appearance before the Committee in December 2016, the driver had been required to complete the Driver Improvement Scheme. There was some uncertainty as to whether this was actually completed by the driver. A record of the Officer's initial referral of the driver to the scheme had been located but there was no record of the course having been completed by the driver. The driver was not able to recall attending the Driver Improvement Scheme although he did recall attending a speed awareness course. It was noted that this was a separate course offered by the Police as an alternative to prosecution in relation to speeding, however, it was unclear.

The driver confirmed that the report was an accurate representation of the facts and was invited to address the Committee in support of his case.

The driver addressed the Committee and provided his explanation in relation to the offences and responded to questions from Members, the Licensing Manager 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 Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 02/21 be revoked, with immediate effect, detailed as follows:-

The driver was advised that he would receive the full decision, considerations and reasons within five working days.

Authority to Act

1. Under Section 61 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may revoke a private hire vehicle driver's licence on the grounds of any other reasonable cause.
2. Under Section 61(2B) of the Act, if it appeared to be in the interests of public safety, the Committee may decide that the revocation was to have immediate effect.
3. The Committee considered: Section 61 of the Act; Policy Guidance to Applicants, Licensed Drivers and Members of the Licensing Committee, which came into force on 1 November 2019 ("the Policy"); the report and its appendices and the representations made by the driver.
4. The review of the licence was considered on its own particular facts and on its merits.

Decision

5. After carefully considering all of the information, the Licensing Committee decided to revoke the Combined Hackney Carriage and Private Hire Vehicle driver's licence, under Section 61 of the Act, on the grounds of any other reasonable cause. The Committee decided in the interests of public safety the revocation was to have immediate effect under Section 61 (2B) of the Act.

Reasons

6. The Committee considered the driver's history on the whole, including spent convictions, as it considered they were relevant in order to assess the driver's suitability to continue to be licensed.
7. The Policy stated that licensed drivers should be safe drivers with good driving records.
8. The Policy stated that the Council took a serious view of a licensed driver committing a motoring offence as driving was his profession and he had a responsibility to ensure he drove his passengers safely and was not a risk to other road users.
9. The Policy stated that if an applicant had a significant history of minor traffic offences, showing a disregard for safety, an application would not normally be considered until a conviction free period of at least 12 months to 3 years, depending on the severity of the risk, had lapsed since the date of the last conviction.
10. The Policy stated that a "TT99" Offence was a major traffic offence, which was - *"to signify a disqualification under totting up procedure. If the total penalty points reaches 12 or more within 3 years, the driver is liable to be disqualified"*. If there had been a major traffic conviction there should be at least four years free of conviction.
11. The Committee considered the driver had a significant history of traffic convictions and driving issues.
12. The Driver currently had 12 points on his DVLA licence. The driver was convicted of four speeding offences in 2019 within a period of four months - 16 March 2019 (£146 fine), 29 April 2019 (£83 fine), 30 April 2019 (£153 fine) and 6 June 2019 (£83 fine).
13. For all the offences, the driver stated he was travelling four miles over the speed limit in either a 30 or 20 miles per hour limit. However, this did not correspond with the varying amount of the fines imposed.
14. The Committee was concerned that the driver was driving his hackney carriage when he committed the offences and, on some occasions, whilst carrying passengers.
15. The Committee was concerned that on one occasion the driver said he was caught out by an undercover vehicle, when the requirement was to drive safely within the speed limits at all times.
16. The driver also had a history of motoring convictions. He was convicted for speeding on 13 June 2008, 10 August 2008 and 4 October 2012.
17. On 21 December 2015, the driver was convicted of failing to provide information to the Police in connection with speeding, fined £660 and his licence was endorsed with six points. The driver was convicted of speeding again on 4 January 2016.
18. The driver was convicted of a motoring offence in respect of a defective tyre which was a safety issue on 16 June 2012.
19. In September 2012 and February 2013, the driver was inappropriately parked in his hackney carriage in a position which could be a risk to other road users.
20. Since 2008, the driver had been convicted of nine offences involving speeding and a further road safety offence.
21. The Committee considered driving over the speed limit was a serious risk to public safety. Drivers were expected to drive within, and be aware of, the speed limit at all times to protect their customers and other road users.

22. The driver stated he was a safe driver and had been licensed since 1981. He stated that his vehicle was slow and he did not drive fast.
23. However, the Committee considered that he had been caught speeding in his hackney carriage on numerous occasions and the length of his licence did not override the risk he had posed to the public when driving his hackney carriage.
24. Also, the Council had previously imposed sanctions on the licence as follows:-
25. In May 1997 the driver received a warning for a historic offence.
26. In June 2004 the licence was revoked because of the driver's abusive behaviour towards a youth worker. However, the driver's appeal was upheld by the Crown Court, following a dismissal from the Magistrates, as it thought it too severe in relation to the incident that occurred.
27. On 15 July 2013, the Licensing Committee suspended the driver's licence as a result of the convictions on 13 June 2008 and 10 August 2008 for speeding; on 16 June 2012 for a defective tyre; incidents of inappropriate parking; driving an unlicensed hackney carriage; failure to return plates and failure to report the convictions. The driver appealed the decision but it was dismissed by the Magistrates and, although reduced by one week, dismissed by the Crown Court.
28. On 5 December 2016 the Licensing Committee ordered the driver to attend an approved Driver Improvement Scheme and issued a warning. This was after considering the previous matters together with two further motoring offences on 21 December 2015 and 4 January 2016 and the driver's failure to declare the convictions.
29. The Committee considered that despite all of the action previously being taken, the driver had continued to offend.
30. It was a condition on the driver's licence that he must report any motoring conviction to the Council, in writing, within seven days.
31. The driver failed to report to the Council any of his convictions.
32. The motoring offences in 2019 only came to light because Officers carried out a check of DVLA licences.
33. The requirement for the driver to declare his convictions was previously addressed on many occasions during the life of his licence; at interviews with officers, at Licensing Committees, in both the Magistrates and Crown Court hearings and through warnings.
34. The Committee did not find it credible that the driver thought he only needed to report motoring offences in 2019 once he received nine or 12 points. In any event, the driver failed to declare the speeding convictions on 30 April and 6 June 2019 when he accrued nine and 12 points respectively on his licence.
35. When the driver applied to renew his licence in 2020, he certified he had no criminal or motoring offences. The Committee did not believe the driver, nor find it in any way credible when stated he had made a mistake on the electronic form by clicking through, that even in itself was irresponsible.
36. The Committee considered this was a pattern of ongoing dishonest behaviour by the driver in an attempt to hide his convictions to avoid the Council taking any action against his licence.
37. A licensed driver must be a trustworthy person and deal honestly and truthfully with the Regulators of the licensing trade.

38. The Policy stated it was an offence for any person to knowingly or recklessly make a false declaration or to omit any material particular in giving information required in the application process. Where an applicant had made a false statement or given a false declaration on their application, the licence would normally be refused.
39. The Policy also stated that existing licence holders that were found to have intentionally misled the Council, or lied as part of the application process, would not be issued with a licence.
40. The driver's history also included a failure to comply with the legislation and rules governing the operation of hackney carriage and private hire licensing. The driver was cautioned for driving an unlicensed hackney carriage following a suspension of the licence because the driver failed to respond to requests to supply insurance cover details. The driver also failed to return hackney carriage plates following requests.
41. The Committee considered all of the issues on the whole in reaching its decision.
42. The Policy stated that multiple offences or incidents were likely to give greater cause for concern and may demonstrate an inappropriate pattern of behaviour which showed an applicant was unsuitable to be granted a licence. If taken separately, the offences may meet the guidelines in this Policy, however, where there were multiple offences the Council would assess the offending on the whole rather than separately in order to assess the suitability of an applicant.
43. The Committee considered the driver did not appear to take responsibility for his actions. Previous explanations for the offences and non-compliance were not credible. The driver had a history of poor, unsafe driving and continued to flout the rules. The Committee had no confidence that any future convictions would be declared. All of these issues made the driver wholly unsuitable to continue to be licensed and a risk to the public, despite being licensed since 1981. Therefore, the Committee decided to revoke the licence with immediate effect in the interests of public safety.
44. This decision was in accordance with the Policy and the Committee considered there were no good reasons to depart from it.
45. If the driver was aggrieved by the decision he may appeal to the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough within 21 days from the date of the notice of the decision.
46. If the driver did appeal the decision and the appeal was dismissed by the Magistrates Court, the Council will claim its costs in defending its decision from the driver which could be in the region in excess of £750.

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By virtue of paragraph(s) 1, 2, 3, 7 of Part 1 of Schedule 12A of the Local Government Act 1972.

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