

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on Monday 20 December 2021.

PRESENT: Councillors R Arundale (Chair), C Cooke, B Cooper, S Dean, T Higgins and S Hill

OFFICERS: S Bonner, J Dixon, T Hodgkinson and A Perriman

APOLOGIES FOR ABSENCE: Councillors E Polano, A Bell, C Hobson, D Jones, L Lewis, D McCabe, M Smiles, J Walker and S Walker

21/40 **DECLARATIONS OF INTEREST**

There were no declarations of interest received at this point in the meeting.

21/41 **MINUTES OF THE PREVIOUS LICENSING COMMITTEE HELD ON 29 NOVEMBER 2021**

The minutes of the Licensing Committee meeting held on 29 November 2021 were submitted and approved as a correct record.

21/42 **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.

21/43 **REVIEW OF A PRIVATE HIRE VEHICLE DRIVER LICENCE REF:- 12/21**

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with the review of Private Hire Vehicle Driver Licence, Ref: 12/21, 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, 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. It was highlighted that the driver was first licensed with Middlesbrough Council in November 2015 had no previous convictions recorded.

The driver appeared before Committee for review of his licence following information received from Stockton Council regarding CCTV footage of an incident on 11 November 2021 involving the driver. The CCTV Control Room had been monitoring a male making repairs to his vehicle in a residential street, when a second male was identified to be dealing drugs to the taxi driver.

The driver was interviewed by a Licensing Enforcement Officer on 25 November 2021 where he was shown the CCTV footage and asked to explain the circumstances. The driver provided an explanation of events and stated that he had earlier picked up the male as a passenger in his vehicle and dropped him off at the location shown in the footage, however, the driver had no change for the fare and stated he had continued to drive to a convenience store further down the road to obtain some change and had driven back to provide the passenger with the change and that this was the transaction taking place in the footage. The driver confirmed that it was his vehicle in the footage and that he was the driver.

The driver's Private Hire Operator confirmed that there was no record of a booking for the journey that the driver stated had taken place and whilst the driver denied any involvement in drugs, he did admit to illegally plying for hire. A copy of the Operator's booking records for the driver were attached at Appendix 1. The driver was interviewed in accordance with PACE in relation to the illegal plying for hire and a copy of the transcript of the interview was attached

at Appendix 2.

A copy of the motor insurance certificate covering the vehicle shown in the CCTV footage on 11 November 2021 was provided by the driver's Operator and was attached at Appendix 3.

As the plying for hire took place in Stockton, all of the relevant information had been referred to Stockton Council for them to consider enforcement action against the driver.

During the driver's interview with the Licensing Enforcement Officer on 25 November 2021, he agreed to undertake a drug detection test. A copy of the test results were attached at Appendix 4 and showed the driver had tested negative.

In addition, Council records showed that in July 2020, information was received from Cleveland Police stating that the driver was arrested for the alleged offence of 'Possess with intent to supply controlled drug – class B – Cannabis'.

The driver was interviewed by a Licensing Enforcement Officer on 6 August 2020 in relation to the matter and a copy of the interview was attached at Appendix 5.

Subsequently, Cleveland Police confirmed that the driver was referred to the 'Divert' scheme for the offence of possession of a class B drug and successfully completed three months having weekly contact with his DSO. The Police confirmed that no further action would be taken against the driver.

Members were given the opportunity to watch the CCTV footage obtained in relation to the incident on 11 November 2021.

The driver confirmed that the report was an accurate representation of the facts and was invited to present his case 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 from the meeting whilst the Committee determined the review.

Subsequently, all parties returned and the Chair announced a summary of the Committee's decision and highlighted that the driver would receive the full decision and reasons within five working days.

ORDERED that Private Hire Vehicle Driver Licence, Ref No: 12/21, be revoked, as follows:-

Authority to act

1. Under Section 61 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may revoke or suspend a private hire/hackney carriage vehicle driver's licence on the grounds that:
 - Since the grant of the licence the Driver has been convicted of an offence involving dishonesty, indecency or violence;
 - Since the grant of the licence the Driver has committed an offence or breached the Act or the Town Police Clauses Act 1847;
 - For any other reasonable cause.
2. 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, CCTV footage and the representations made by the driver.

Decision

3. After carefully considering all of the information and considering the review on its own merits the Committee decided to revoke the private hire vehicle driver's licence on the grounds of any other reasonable cause for the reasons set out below.

Policy considerations

4. Middlesbrough Council's Taxi Licensing Policy sets out the requirements in terms of convictions or other at appendix G of the policy. It states:

"A person can be cautioned as an alternative to prosecution for various different offences. For a caution to be administered, the offender must agree to the caution, the evidence must be sufficient to have warranted a prosecution and the offender must admit his guilt.

Any action taken against an applicant who received a caution will depend on the nature and circumstances of the offence, any previous history of criminality or complaints and the applicant's attitude towards the offence. Reference should also be made to other relevant parts of the guidance.

For the purpose of the guidelines, simple cautions, endorsable fixed penalties and public order fixed penalties shall be treated as though they were convictions and they shall be disclosed to the Council accordingly unless deemed to be protected under the above-mentioned Order".

Appendix G, Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character p125.

"An applicant with an isolated conviction, caution, reprimand or final warning issued by the Police, for a drug related non-driving offence should be required to show a period of at least three years free of conviction, caution, reprimand or final warning before an application is considered.

If the conviction, caution, reprimand or final warning relates to the supply of controlled drugs; possession with intention to supply controlled drugs; the production of controlled drugs (for commercial purposes) or importing drugs then the application will be refused".

Appendix G Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character P131.

"The Council can consider circumstances of concern even though a conviction has not been obtained or the conduct does not amount to a criminal offence.

The Council's focus is the impact of the applicant or licence holder upon members of the public. This does not require any consideration of the personal circumstances of the applicant or licensee, which are irrelevant, except perhaps in very rare cases to explain or excuse some conduct of the driver. If a licence holder's conduct is such that, were they to be applying for a new licence their application would normally be refused, they should expect consideration to be given as to the suspension or revocation of their licence".

Appendix G Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character P137.

"In assessing the action to take, the safety of the travelling public must be the paramount concern".

Appendix G Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character P138.

Reasons

5. The Committee carefully considered the review based upon the report and appendices, the representations of the driver, the CCTV evidence and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2019. The matter was considered on its own merits.
6. The driver appeared before the Licensing Committee as a result of information received from Stockton Council and the accompanying CCTV.
7. The CCTV footage, dated 11 November 2021, identified the driver pulling up on Northcote Street in Stockton, a male approaching his vehicle and an "exchange"

taking place. Shortly after the exchange, a number of Police vehicles attended the scene and made numerous arrests. It is alleged that the males were involved in drug dealing from the premises.

8. In brief, in interview on 25 November 2021, the driver denied any involvement in dealing or receiving drugs and informed the interviewing officer that he had picked up an individual in Ingleby Barwick and had conveyed them to Stockton. The passenger gave the driver a £20 note, and as he had no change, he went to a shop and changed the £20 note and returned to the male to provide him with his change. During the interview, the driver admitted an offence of Plying for Hire, having picked up the passenger without a booking in Ingleby Barwick.
9. The driver had also been interviewed by Licensing Officers on 6 August 2020 following information being received from Cleveland Police on 21 July 2020 following an arrest for possession with intent to supply controlled drug – Class B – Cannabis. Since that arrest, Cleveland Police confirmed that the driver was referred to the Divert Scheme for that offence.
10. The Divert Scheme was a Police and Crime Commissioner Initiative, which aimed to steer first time and low-level offenders away from the criminal justice system and towards support. If offenders did not complete the programme, they risked being charged and taken to court for the original offence.
11. The driver maintained his position that at the time of the CCTV, he was providing change to the passenger who he had recently picked up from Ingleby Barwick. The driver stated that he had dropped the passenger off round the corner and was told by the passenger that he would be down the street at a vehicle that was being repaired.
12. The Committee noted that, despite the driver's assertions, and his admission to a plying for hire offence, his acceptance of the Divert Scheme, the CCTV evidence and his version of events, that he was not credible in his evidence.
13. Having heard the representations, having due regard to Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2019 and the overriding aim of the licensing regime being the protection of the public, the Committee could see no reason to depart from the Policy and the revocation of the driver's Private Hire Vehicle driver licence was deemed reasonable and proportionate in the circumstances and aligned with the aims and objectives of Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2019.
14. 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.
15. If the driver did appeal the decision and the appeal was dismissed by the Magistrates Court, the Council would claim its costs in defending its decision from the driver which could be in the region in excess of £750.

21/44

REVIEW OF COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE REF:- 13/21

The Committee was informed that the driver had contacted the Licensing Office prior to the meeting to advise that he was unable to attend due to illness.

ORDERED that consideration of the review of Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref No: 13/21, be deferred to the next meeting of the Licensing Committee on 10 January 2022 to allow the driver a further opportunity to attend.

21/45

APPLICATION FOR REINSTATEMENT OF A PRIVATE HIRE VEHICLE DRIVER LICENCE REF:- 14/21

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application to reinstate Private Hire Vehicle Driver Licence, Ref: 14/21, 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, 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 in relation to the application to reinstate the driver's Private Hire Vehicle driver's licence.

It was highlighted that the driver first appeared before Members in August 2015 when Members granted him a Private Hire Vehicle driver licence after considering the offence detailed at 1) in the report. The driver's latest licence was currently suspended and was due to expire on 31 August 2022.

The applicant now appeared before Members to consider the reinstatement of his licence which was suspended with immediate effect by the Licensing Manager on 10 March 2020 following information received from Cleveland Police.

On 9 March 2020 information was received from Cleveland Police that the driver had been arrested for the alleged offence of 'Kidnap' and 'Sexual Assault on a Female' and that he was released under investigation whilst enquiries were ongoing.

The Licensing Manager contacted the driver in relation to the matter on 10 March 2020 when he explained the circumstances of the allegations. A record of this conversation was attached at Appendix 1.

Also on 10 March 2020, the Licensing Manager suspended the driver's licence with immediate effect until such time as the matter was investigated by the Police and referred to the Licensing Committee for Members to determine the status of his licence.

On 2 October 2020, Cleveland Police confirmed that no further action would be taken against the driver in relation, however, the Licensing Manager advised that the reason for the delay in bringing the matter to Committee was due to difficulties in obtaining additional information from Cleveland Police. The information was eventually provided on 9 December 2021 and was provided at Appendix 4.

In relation to the offence detailed at 1) in the report, it was noted that the driver was interviewed by a Licensing Enforcement Officer on 5 November 2020 when he provided an explanation in relation to the offence and also confirmed his previous explanations for two previous warnings issued to him. Copies of the warnings issued in January and November 2018 were attached at Appendix 2 and Appendix 3 respectively. The driver also provided his version of events in relation to the incident on 6 March 2020.

The driver confirmed that the report was an accurate representation of the facts and was invited to address the Committee. The driver presented his case 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 driver and Officers of the Council, other than representatives of the Council's Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the application for reinstatement.

Subsequently, all parties returned and the Chair announced a summary of the Committee's decision and highlighted that the driver would receive the full decision and reasons within five working days.

ORDERED that Private Hire Vehicle Driver Licence, Ref 14/21 be reinstated, as follows:-

Authority to Act

1. The Committee considered Section 61 of the Local Government Miscellaneous Provisions Act ("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 the representations made by the driver.
2. The driver appeared before the Licensing Committee to consider the reinstatement of

his licence following a suspension with immediate effect by the Licensing manager on 10 March 2020 following information received from the Police

Decision

3. After carefully considering all of the information and considering the review on its own merits the Committee decided to reinstate the private hire vehicle driver's licence with the following conditions:-
 - a) The driver would receive a warning as to his future conduct.
 - b) The driver was required to attend the Licensing Office to receive updated training on the code of conduct of drivers.

Reasons

4. The Committee carefully considered the review based upon the report and appendices, the representations of the driver, information from Cleveland Police and Middlesbrough Council's Private Hire and Hackney Carriage Licencing Policy 2019. The matter was considered on its own merits.
5. The driver appeared before the Licensing Committee as a result of information received from Cleveland Police and subsequent unsuccessful attempts by the Licensing Department to obtain further information from Cleveland Police.
6. The driver accepted his actions were inappropriate and against policy and the code of conduct. Additionally, the driver had been licensed since 2015 with no relevant issues to the matter in hand, which would indicate cause for concern.
7. The evidence provided to the Police was questionable and they deemed the matter of insufficient seriousness to bring charges against the driver and there were issues surrounding the credibility of the witness.
8. For these reasons the Committee reinstated the drivers licence with the conditions attached as outlined above.

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

None.