

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on Monday 4 September 2023.

PRESENT: Councillors L Lewis (Chair), S Dean, J Cooke, S Hill, D Jones, J Kabuye, L Mason, J McTigue, I Morrish (Substitute for M Saunders) and A Romaine

OFFICERS: S Bonner, C Cunningham and T Hodgkinson

APOLOGIES FOR ABSENCE: Councillors C Cooper, T Livingstone, M Saunders and J Walker

23/7 **DECLARATIONS OF INTEREST**

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

23/8 **MINUTES - LICENSING COMMITTEE - 24 JULY 2023**

The minutes of the Licensing Committee meeting held on 24 July 2023 were submitted and approved as a correct record.

23/9 **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.

23/10 **APPLICATION FOR A REVIEW OF A PRIVATE HIRE VEHICLE DRIVER LICENCE REF: 08/23**

Before introducing the first Driver, the Chair advised Members that during closed deliberations proposals and motions should only be made at the end of any discussions to ensure all perspectives had been considered.

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence Ref: 08/ 23.

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 he had received a copy of the report and understood its contents. The Driver was accompanied by a licensing consultant who was in attendance virtually.

The Licensing Manager presented a summary of the report, outlining the Driver had been licenced as a Private Hire Vehicle Driver since March 9 2023. Members were advised the Driver appeared before the Committee in relation to a complaint about the standard of his driving on the 12 May 2023. Members were also advised the Driver was interviewed by a Licensing Enforcement Officer on 16 June 2023 and 11 July in relation to offences at 1 and 2 in the report, as well as the complaint.

As part of the complaint dash-cam video evidence was presented to the committee.

Members were advised the offences listed at 1 and 2 in the report were not new and were previously known to the Council. However, the Committee was advised these remained relevant.

The Driver presented the case in support of his application and responded to questions from Members and the Council's Legal Representative.

The Driver's representative advised Members the incident resulting in the complaint of 12 March 2012 was due to extenuating circumstances, namely a medical emergency. The

emergency required the driver reach home at pace.

Members were told the incident was not reflective of the Driver's normal driving standards. Members were told the Driver was familiar with the area in question and had driven according to the circumstances. Members were also advised the Driver did not deny any of the circumstances or incidents and that he apologised for his driving standards. The Driver also stated he would be prepared to attend a Driver Improvement Scheme.

It was clarified the Driver had three points on his licence rather than six and there had been no further incidents in the four months since the incident.

It was confirmed that there were no further questions and the Driver and Officers of the Council, other than representatives of Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the application.

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: 08/23, be retained, but that the Driver be issued with a warning regarding his future conduct and be required to complete the Driver Improvement Scheme at his own expense within three months from the date of decision.

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 had 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 the 1 November 2019 ("the Policy"), the report and the representations made by the Licensee and his representative.

Decision

3. After carefully considering all of the information and considering the review on its own merits the Committee decided, on this occasion, to permit the Driver to keep his licence, but that the Committee give a warning in respect of the Driver's driving standards and require the Driver to attend a Driver Improvement Scheme, approved by the Council, at his own expense, within 3 months from the date of this decision.

Reasons

4. The Driver had been convicted of two speeding offences on 2 June 2020 and the 13 March 2022. He currently had three points on his licence.
5. A complaint had been received by a member of the public on the 15 May 2023, with dashcam footage of an incident on the 12 May 2023. The Committee considered this footage showed the Driver driving erratically and through a red light.
6. The Committee noted the Driver's mitigation that he considered it an emergency type situation as he required to go to the toilet, but the Committee still considered as a licenced driver, he should always drive safely.
7. The Policy stated that if a Driver had six valid penalty points on his licence the Driver should attend a driver improvement course and be given a warning as to future conduct. The Committee considered that in addition to the previous speeding

offences and having three points on his licence, the recent erratic driving and driving through a red light pushed the matter into requiring the Driver to attend a driver improvement course and to be given a warning in line with the Policy. It considered that the Driver Improvement Scheme and a warning were appropriate to ensure the Driver drove safely and complied with the rules going forward for the protection of the public.

8. This decision was final and there was no internal or statutory route of appeal, however, the Driver had the option of judicially reviewing the lawfulness of the decision to the high court if grounds had been made out. If the Driver decided to challenge the decision by way of judicial review, the Driver was advised to seek independent legal advice as to the grounds and time limits that may apply. If the Driver did take this course of action the Council would apply for any costs it incurred in defending its decision.

23/11

APPLICATION FOR A COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE REF: 09/23

The Director of Adult Social Care and Health Integration submitted an exempt report in connection with an application for a Private Hire Vehicle Driver Licence Ref: 09/ 23.

The Chair introduced those present and outlined the procedure to be followed. The Applicant, who was accompanied by a relative, verified his name and address. A copy of the report was provided to the Applicant who confirmed he understood its contents.

The Licensing Manager presented a summary of the report, outlining the Applicant appeared before Members in relation to offences 1 and 2 in the report. Members were advised the Applicant already held a Private Hire Vehicle Driver's Licence with Wolverhampton Council which was due to expire in 2024.

Members were advised, that in relation to offence 1, the Applicant had undertaken and completed the necessary actions required for the offence. Members were also advised, that in relation to offence 2 in the report, the Applicant was not in the country at the time of being notified of the offence.

The Applicant was invited to make his case to the Committee. The Applicant informed Members that, despite being licenced with Wolverhampton Council, it would be advantageous to be licenced in Middlesbrough as this would be closer to home. The Applicant's relative advised Members that while the offences cited in the report were regrettable, they had happened, nonetheless.

When asked, the Applicant informed Members he did not disclose on his application form the offence at 2 in the report as he thought that conviction was spent.

The Applicant continued to present the case in support of his application and responded to questions from Members and the Council's Legal Representative.

It was confirmed that there were no further questions and the Applicant and Officers of the Council, other than representatives of Legal and Democratic Services, withdrew from the meeting whilst the Committee determined the application.

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

ORDERED that the application for Private Hire Vehicle Driver Licence, Ref No: 09/23, be refused.

Authority to Act

1. Under Section 51 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may decide to grant a private hire vehicle driver's licence only if it is satisfied the driver is a fit and proper person to be granted such a licence.

2. The Committee considered Section 51 of the Act, the Middlesbrough Council Private Hire and Hackney Carriage Policy 2022 ("the Policy"), the report and representations made by the Applicant and his representative.
3. The Application was considered on its own particular facts and on its merits.

Decision

4. After carefully considering all the information the Licensing Committee decided refuse to grant the Application for a private hire vehicle driver's licence on the grounds that the Committee was not satisfied the Applicant was a fit and proper person to be granted a licence by Middlesbrough Council. The reasons for the decision are as follows:

Reasons

5. The Applicant had been convicted of Battery on the 13 August 2020. He received a Community Order with a rehabilitation activity requirement. This Order expired on the 1 September 2022.
6. The Applicant was convicted of Battery of his wife and had hit her three times in her face. The Applicant had said this was because as he took his son from his wife to feed him, she had pushed him, and he had reacted by hitting her. The child was under a child protection plan until this was removed in 2022. The Applicant said that he was sorry for the offence, that he is still with his wife, and they have a second child.
7. The Applicant had confirmed that despite this offence, he had been granted a licence to drive private hire vehicles by Wolverhampton Council and was employed in the area.
8. Middlesbrough Council's Policy on violence was very clear. Licensed drivers were in an extreme position of trust and operated in a high-risk environment. A person who responded with violence when provoked is not suitable to be licensed. The Policy made it clear that Middlesbrough Council considered incidents of domestic violence to be extremely serious. It also considered if an individual was prepared to assault a person in a domestic or home environment then there were concerns over the person's ability to maintain their temper when working in an environment dealing with volatile members of the public.
9. The Policy sent out a clear message that an Applicant with a conviction involving violence against a person or connected with any offence of violence against a person would not be licensed unless they could show a period of at least ten years free of any such violent incident since the completion of any sentence imposed. This clearly reflected the Council's position that the travelling public should be safe and feel safe when being driven by Middlesbrough Council licensed drivers. Applicants who had previously committed violence needed to show a ten-year free period to reflect they had been successfully rehabilitated and were no longer likely to be a risk or a threat.
10. The Policy reflected and incorporated the Statutory National Hackney Carriage and Private Hire Standards. This was brought in to tackle failing standards in the private hire and hackney carriage trade where children and vulnerable passengers had been put at risk and / or harmed. This says for violent offences against the person the starting point was ten years free from completion of the sentence and a cautious view should be taken of offences involving violence against vulnerable groups.
11. The Policy was widely consulted upon and set the clear standards required of Licensed drivers in Middlesbrough. The Committee did have the power to depart from the Policy in exceptional circumstances or where there are very good reasons to do so. The Committee did not accept there were such exceptional, clear or compelling circumstances in this case to depart from the Policy because a Licence was granted by a different Council hundreds of miles away from Middlesbrough and Wolverhampton may not (up to now) have received complaints.

12. Although the Applicant had a licence from Wolverhampton and could carry out private hire under that Licence in Middlesbrough, the Committee considered it could not in all consciousness grant a licence to a person who committed battery on his wife with the sentence expiring only 1 year ago, which involved a child and where child protection services had to become involved. The Members of the Committee had duty to, and are accountable to, the public of Middlesbrough (unlike Members of Wolverhampton Council who were accountable to the constituents of Wolverhampton), to ensure so far as possible its travelling public were safe when being driven by Middlesbrough Licensed Drivers and that Middlesbrough Council standards are upheld.
13. In addition, the Applicant failed to declare his conviction for battery and a conviction for speeding on his application form. The Applicant claimed he had not read the form properly and thought his conviction was spent. The Committee would not accept this excuse. The Application Form was very clear and asked for any criminal cautions, convictions, motoring offences or any summons served or enquiries or investigations of any kind. The Policy was clear on this point. It was an offence to knowingly or recklessly make a false declaration or omit material and where an Applicant had made a false declaration the Policy said a licence should be refused. It also said a licence should be refused if an Applicant misled the Council or lied as part of the Application process. It was also essential in the interests of public protection that licensees could be relied upon to self-report and the Applicant had failed to do this in his application form. The Policy again reflected the Statutory Standards which questioned the honesty and suitability of an Applicant who did not disclose relevant information.
14. Therefore, the Committee decided that it could not be satisfied the Applicant was fit and proper in accordance with its Policy and the Statutory Standards to be granted a Licence by Middlesbrough Council.
15. If the Applicant was aggrieved by the decision, he could appeal to a Magistrates Court within 21 days from the date of the notice of the decision. The local magistrates for the area are the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough.
16. If the Applicant 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 Applicant which could be in the region of £1000 or more.

23/12

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

None.