

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on 10 January 2022.

PRESENT: Councillor Arundale (Chair); Councillors: Bell, Dean, Higgins, Hill, C Hobson and Lewis.

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

APOLOGIES FOR ABSENCE were submitted on behalf of Councillors Cooke, Jones, McCabe, Polano, Smiles, J Walker and S Walker.

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

MINUTES – LICENSING COMMITTEE – 20 DECEMBER 2021

The Minutes of the previous Licensing Committee held on 20 December 2021 were submitted and approved as a correct record.

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: 13/21

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: 13/21, where circumstances had arisen which required special consideration by the Committee.

It was highlighted that the matter had been due for consideration at the previous meeting of the Licensing Committee on 20 December 2021, however, the driver had been unable to attend due to illness.

The driver had contacted the Licensing Office on the morning of the meeting to advise that he was again unwell. With the driver's consent, arrangements were made for him to join the meeting virtually. The Licensing Manager was also permitted to attend the meeting by virtual means due to awaiting results of a Covid PCR test.

Once the driver confirmed that he was able to see and hear proceedings, the Chair introduced those present and outlined the procedure to be followed. The driver 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 September 2007 and first appeared before Committee in December 2019 as a result of the offence detailed at 1) in the report and also in relation to a complaint received from the Deputy Manager of a Centre for children with disabilities.

The complaint related to the driver's standard of driving. A school transport vehicle had been dropping off four young people at the centre and whilst the school bus driver was putting away the disabled access ramps, the driver had driven his vehicle across the footpath between the centre and the school bus in order to get past. Having viewed CCTV of the incident, the Licensing Manager suspended the driver's licence with immediate effect.

The decision was subsequently reviewed by the Licensing Committee in December 2019 when Members decided to lift the suspension and reinstate the driver's licence, however, he was also issued with a warning to refrain from unsafe driving in future.

The driver appeared before Members again in December 2020 in relation to the offence detailed at 2) in the report. The driver did not notify the Licensing Office of the offence, as required by condition on his licence, nor did he mention the offence at his Committee appearance in December 2019. The offence was discovered by Officers carrying out annual driving licence checks. On that occasion Members determined to suspend the driver's licence for four weeks and required him to complete the Driver Improvement Scheme within three months. A copy of the decision was attached at Appendix 1.

The driver completed the Driver Improvement Scheme in May 2021 and a copy of his assessment was attached at Appendix 2.

The driver now appeared before Committee following the discovery (by Officers carrying out routine driving licence checks) of the offence detailed at 3). Again, the offence was not disclosed to the Licensing Office or at the driver's previous Committee appearance. A copy of the check was attached at Appendix 3.

The driver was interviewed by a Licensing Enforcement Officer on 7 December 2021 when he confirmed his previous explanations and provided explanations for the latest offence.

Members were made aware that the driver had also failed to declare the offence at 1) when he last made his application to renew his licence in August 2019, stating that the Council was already aware of it.

In addition to the above information, Officers had expressed concerns regarding the driver's non-compliance with routine requests. Council records showed that Officers had suspended the driver's licence on three occasions – January, March and August 2020 - due to his failure to comply with requests. These were detailed in the report. The driver stated he had been having problems with his post when asked why he had failed to comply with the requests.

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

Subsequently, all parties were re-admitted 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: 13/21, 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 had been convicted of an offence involving dishonesty, indecency or violence;
 - Since the grant of the licence the driver had 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 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 Combined Hackney Carriage and 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 which stated:-

Overriding Duty

“The aim of the Council, when carrying out its function of licensing hackney carriage and private hire drivers, was the protection of the public including those who use or can be affected by hackney carriage and private hire services.

The Council’s duty was to ensure, so far as possible, its licensed drivers were fit and proper people to hold such a position of trust. This involved a detailed assessment of an applicant or licensee’s character.

The Council’s licensed drivers should be safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest and not persons who would take advantage of their employment to abuse or assault passengers.

A licensed driver should be courteous, avoid confrontation, not exhibit prejudice, not take the law into their own hands and demonstrate conduct befitting to the trust that is placed in them.”
Appendix G, Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character p125.

Cautions and fixed penalties

“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 their guilt.

Any action taken against an applicant who had received a caution would 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 this guidance.

For the purpose of these 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 p126.

(a) Minor Traffic Offences

“Any motoring offence showed a lack of responsibility whilst driving, either in terms of the maintenance and safety of their vehicle or in the manner of their driving.

The Council took a serious view if a licensed driver committed a motoring offence as driving was their profession, and they had a responsibility to ensure they drove passengers safely and were not a risk to other road users.

A conviction, caution, reprimand or final warning issued by the Police, for minor traffic offences may not normally prevent a person from being considered for a licence, depending on the circumstances.

If an applicant had up to six "valid" penalty points on their driving licence for such offences then the application may be granted subject to a written warning as to future conduct. In this context 'valid' meant valid for the purposes of the totting up procedure, which for most minor traffic offences meant a period of three years from the date of the offence.

If an applicant had between seven and nine live points on their licence for such offences and/or a history of poor driving then the application would be referred to the Licensing Committee who may decide to refuse the application.

At the very least the applicant would be required to complete a driver improvement course identified by the Council, at their own expense, and a severe warning would be given that further offences may result in revocation of the licence.

Where an applicant had more than nine valid penalty points for such convictions, they must show a period of 12 months free from conviction, caution, reprimand or final warning before their application was considered. Even then the application would be referred to the Licensing Committee and may be refused.

If an applicant had a significant history of offences, showing a disregard for safety or had been disqualified, for example through the totting up process, an application would not normally be considered until their DVLA licence had been restored and a conviction-free period of at least 12 months to three years, depending on the severity of the risk, had lapsed since the date of conviction or reinstatement of the DVLA Licence, whichever was the latter.

If a Licensee had driven unsafely as a result of minor traffic offences or upheld complaints about their driving standards, putting the public at risk, depending on the severity of the risk, the Council may require the Licensee to attend a driver improvement course at their own expense and/or suspend the Licence or revoke the Licence. In view that unsafe driving was a risk to public safety a suspension or revocation may take immediate effect."

Appendix G Policy on the Relevance of Convictions, Cautions, Reprimands, Warnings, Complaints and Character P127 -128.

"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 driver was due to appear before the Committee on 20 December 2021, however, following telephone contact from the driver, who indicated that he was unwell and suffering from covid-like symptoms, a decision was made to adjourn the matter until it could be heard on 10 January 2022.
6. On the morning of 10 January 2022, the driver contacted the Licensing Office to inform them that he was again feeling unwell and displaying similar symptoms. Rather than adjourn the matter further, the decision was taken to test the video conferencing facilities with the driver to allow him to participate in proceedings. The testing of the equipment was successful and no issues were raised. Therefore, the hearing proceeded with the driver engaging in the Committee Hearing by Webex conferencing facility in front of the Members who appeared in person. The Licensing Manager also appeared by Webex.

7. The reasons for the decision were as follows:-
8. The Committee carefully considered the review based upon the report and appendices, the representations of the driver and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2019. The matter was considered on its own merits.
9. The driver had appeared before Committee on two separate occasions - the first occasion, on 9 December 2019, was as a result of receiving three penalty points and fine for an offence of driving with defective tyres on 28 April 2019 and following a complaint, outlined in the Officer's report, of driving his vehicle on a path and grass verge to bypass a bus decamping children with disabilities. Having had his licence suspended with immediate effect by the Licensing Manager in relation to the complaint, the Committee lifted the suspension, reinstated the driver's licence and warned him to refrain from unsafe driving.
10. On the second occasion, the driver appeared before Committee on 14 December 2020 for failing to notify the Licensing Office that his licence had been further endorsed with six penalty points and fined for failing to give information as to the identity of the driver on 4 October 2019. At this hearing, the Committee determined that, in view of his poor driving standards, the driver be required to attend the Driver Improvement Scheme within three months and suspended his licence for a period of four weeks.
11. The matter for consideration by the Committee on this occasion was that the driver now appeared before them having committed a further driving offence, leading to the endorsement of his licence of a further six points and a fine for failing to give information as to the identity of the driver on 6 November 2019. In addition, the driver failed to notify the Licensing Office of this conviction.
12. Further information was provided to the Committee in respect of issues identified relating to the production of DBS certificates on three separate occasions.
13. The Driver's licence had now been endorsed with 15 penalty points.
14. The Committee noted that upon exceeding 12 penalty points, the driver was required to attend court due to "Totting Up". The driver indicated that he pleaded exceptional hardship and avoided disqualification.
15. This was noted by the Committee, however, the Committee was minded to consider the case of **Leeds City Council and Hussain** in that their focus must be on the impact of the driver's character on members of the public and that consideration of the personal circumstances of the driver were an irrelevant consideration. Therefore, the Committee should not be influenced by the court's decision on disqualification and hardship.
16. 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 Combined Hackney Carriage and Private Hire Vehicle 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.

17. 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.
18. If the driver does 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.