

**LICENSING COMMITTEE**

A meeting of the Licensing Committee was held on Monday 24 April 2023.

**PRESENT:** Councillors , E Polano (Vice-Chair), A Bell, C Cooke - Elected Mayor, S Dean, T Higgins, S Hill, C Hobson and D Jones

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

**APOLOGIES FOR ABSENCE:** Councillors N Gascoigne, L Lewis, D McCabe, M Smiles and J Walker

22/36 **DECLARATIONS OF INTEREST**

**\*\* ONE MINUTE'S SILENCE – COUNCILLOR RON ARUNDALE**

A minute's silence was held as a mark of respect to remember Councillor Ron Arundale who sadly passed away on 20 April 2023. Councillor Arundale was elected as a Councillor in Kadar Ward in 2011 and had served on the Licensing Committee since 2011, becoming Chair in 2019. He would be greatly missed by everyone and the Committee expressed its deepest condolences to his family.

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

22/37 **MINUTES - LICENSING COMMITTEE - 3 APRIL 2023**

The minutes of the Licensing Committee meeting held on 3 April 2023 were submitted and approved as a correct record.

22/38 **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.

**\*\* 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 the remaining agenda items in the following order: 6, 7, 5.

22/39 **APPLICATION - PRIVATE HIRE VEHICLE DRIVER LICENCE - REF: 03/23**

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: 03/23, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, 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, outlining that the applicant had previously been licensed with Middlesbrough Council from June 2003 until his licence was revoked by Members in December 2016 due to his history of poor driving standards. He now appeared before Members with a fresh application in relation to the offence detailed at 1) and his previous history.

It was highlighted that, when previously licensed, the applicant had appeared before the Committee for review of his licence on several occasions: 16 July 2007 (retained licence but

required to complete the Driver Improvement Scheme); 15 March 2010 (retained licence but required to complete the Driver Improvement Scheme); 10 May 2010 (licence retained following completion of the Driver Improvement Scheme); and 5 December 2016 when Members decided to revoke his licence.

The applicant subsequently appealed the Committee's decision to revoke and his appeal was dismissed by Teesside Magistrates Court on 7 April 2017. A copy of the Court bundle was attached at Appendix 1.

Attached at Appendix 2 was a copy of the record of the applicant's DVLA history.

The applicant was interviewed by a Licensing Enforcement Officer on 29 March 2023 when he confirmed his previous explanations of previous offences and provided an explanation in relation to the offence at 1) and confirmed that there were no other offences of which the Council was unaware.

The Licensing Manager also confirmed that in relation to the offence at 1), the applicant had received six penalty points on his DVLA licence, not three as stated in the report.

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

The applicant presented the case in support of his application 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 applicant 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.

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: 03/23, 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 was satisfied the driver was 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.
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 to 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 the licence. The reasons for the decision are as follows:-

#### Reasons

5. The applicant was convicted of an offence of having no insurance on 30 December 2021, fined £40 and issued with 6 penalty points. Having no insurance was classed under the Policy as a major traffic offence. The Policy required a period of five years free of any motoring conviction or incident from the date of conviction or completion of sentence before a licence should be granted. Only approximately one and a half years had passed.

6. Prior to this conviction, the applicant had the following convictions or was involved in the following incidents. The Committee considered it was necessary to consider previous, old convictions and incidents in order to assess the pattern of driving issues and suitability of the applicant. Most of the offences took place whilst the applicant was licensed by the Council putting the public at risk.

## History:-

|            |                                      |   |
|------------|--------------------------------------|---|
| 27.12.1999 | excess speed                         | £40 fine and 3 penalty points                       |
| 5.3.2001   | excess speed                         | £60 fine and 3 penalty points                       |
| 18.01.03   | excess speed                         | £40 fine and 3 penalty points                       |
| 25.06.04   | contravention of pedestrian crossing | £60 fine and 4 penalty points                       |
| 05.06.05   | Licence Granted                      |   |
| 27.04.07   | charging passengers excessive fare   | £300 fine. £513 costs                               |
| 16.07.07   | Licensing Committee                  | Warning and DIS                                     |
| 23.10.07   | Using mobile phone                   | £60 fine and 3 penalty points                       |
| 07.11.07   | Driver improvement Scheme            | completed   |
| 03.04.08   | Using mobile phone                   | £60 fine and 3 penalty points                       |
| 2010       | Excess Speed                         | 3 penalty points                                    |
| 2010       | Excess Speed                         | 3 penalty points                                    |
| 15.03.10   | Licensing Committee                  | Suspended until completion of DIS<br>Severe warning |
| 19.03.10   | Driver Improvement Scheme            | Completed   |
| Nov 2010   | Using mobile phone                   | warning by officers                                 |
| Nov 2010   | Using mobile phone                   | warning by officers                                 |
| 04.09.12   | Using mobile phone                   | 3 penalty points                                    |
|            | Failed to declare                    |   |
| 10.12.14   | Excess Speed                         | 3 penalty points                                    |
|            | Failed to declare                    |   |
| 08.04.15   | Excess Speed                         | 3 penalty points                                    |
|            | Failed to declare                    |   |
| 14.09.15   | complaint of dangerous Driving       |   |
| 05.12.16   | Licensing Committee                  | Licence Revoked                                     |

8. In addition to the unsafe driving offences and incidents, the Committee previously considered that the applicant was dishonest in that despite being a clear condition on his licence, the applicant failed to declare his motoring convictions above. The previous Committee also considered the incident on 14 September 2015 to be dangerous driving putting the public and other road users at serious risk. It also considered that the applicant's explanations were untrue and he had misled the Committee.
9. The applicant had been given warnings, suspensions and attended two Driver Improvement Schemes, at the end of which was evaluated as still having to improve but continued to drive unsafely and failed to report convictions which ultimately led to his revocation in December 2016.
10. The applicant had a significant history of offences and incidents showing a disregard for safety whilst he was licensed and driving was his profession. Where there was a history of unsafe driving the Policy required a five-year period free of incident or conviction.
11. A further offence was committed on 31 December 2021 for having no insurance for which the applicant had six points on his licence. This was classed as a major traffic offence and required a five-year period free of conviction or incident to ensure the public were protected. The Committee was not convinced that the applicant was being wholly honest about the circumstances of the offence; in the report saying he was driving a friend's car and, in the meeting, saying he was delivering pizzas. It considered it was unclear if he had checked or how often he had checked the insurance. In any event the Committee would consider a reasonable person in his position to check the

documents to be sure he was insured. It considered it to be very serious if a person was not insured whilst driving, especially if wanting to obtain a licence to drive the public.

12. In light of the applicant's history and the recent conviction, the Committee could not be satisfied that the applicant was a safe, suitable, trustworthy person to be licensed. It found no good reason to depart from its policy.
13. If the Applicant is aggrieved by this decision, they may appeal to a Magistrates Court within 21 days from the date of the notice of the decision. The local magistrate's court for the area is the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough.

22/40

### **APPLICATION - PRIVATE HIRE VEHICLE DRIVER LICENCE - REF: 05/23**

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: 05/23, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, 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, outlining that the applicant was previously licensed with Middlesbrough Council from February 2001 until his licence was revoked in April 2018, by the Licensing Manager, following the incident at 6) in the report. (A copy of the Licensing Manager's decision was attached at Appendix 7).

It was highlighted that the applicant had appeared before Members when he was previously licensed – in August 2003 in relation to the offences at 2) and 3) detailed in the report - a copy of the Committee report considered at that time was attached Appendix 1; and September 2007 in relation to the offences at 4) and 5) detailed in the report - a copy of the Committee report considered at that time was attached Appendix 2. On both occasions he was permitted to retain his licence but warned that any future convictions may see him return to Committee where his licence may be revoked.

Council records showed that the applicant was also issued with a number of warnings: January 2011 (copy of warning letter attached at Appendix 3); March 2013 (Appendix 4); April 2013 (Appendix 5); and November 2013 (Appendix 6).

The applicant was interviewed by a Licensing Enforcement Officer on 11 April 2023 when he confirmed his previous explanations for the offences at 2) to 5) in the submitted report. The applicant provided explanations for the offences at 1) and 7). The applicant also confirmed that he had held a PSV licence, obtained through VOSA, since 2021 and had declared all convictions as part of that application process and had completed an advanced driving course in order to obtain the PSV licence.

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

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

During questions, the applicant advised that he had been prosecuted in relation to the incident at 6) in the report and had subsequently received six points on his DVLA licence.

The Chair granted a short adjournment in order for the Licensing Manager to make enquiries to confirm the information. The Licensing Manager and applicant withdrew from the meeting whilst enquiries were made and subsequently returned. The Licensing Manager confirmed that the six penalty points did not appear on the applicant's DVLA licence as the incident had occurred in 2018 and was now classed as a spent conviction. The points would have shown up on the applicant's DVLA licence for a period of four years and this period had now expired. The applicant had stated that he was prosecuted by the Police in relation to the matter and had pleaded guilty in Court, however, this had not shown up on his enhanced DBS check. It was

clarified, however, that the six points on his DVLA licence would have shown up at the time he was granted a PSV licence by the Traffic Commissioner and the applicant confirmed that this was the case as he had declared all of his convictions as part of the application process and as a result, had been required to successfully complete and advanced driving course, which he had done.

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 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: 05/23, be granted but the applicant be required to successfully complete the Driver Improvement Scheme, at his own expense, within three months.

#### 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 was satisfied the driver was 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.
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 to grant the application for a Private Hire Vehicle driver's licence on the grounds that it was satisfied the applicant was a fit and proper person to be granted such a licence but that the grant of the licence was subject to the applicant completing a Driver Improvement Scheme, at his own expense, within three months in the interests of public safety.

#### Reasons

5. The applicant had been convicted of the following motoring offences and was involved in the following incidents:-

History:-

|          |  |
|----------|--|
| 27.07.92 | Causing death by dangerous driving, sentence, Community Service Order 240 unpaid work hours, Costs £250 and Disqualification from driving for six years. |
| 16.02.99 | Overloading passengers, sentence £40 fine and 3 penalty points   |
| 01.02.01 | The Applicant was granted a private hire vehicle driver's licence  |
| 22.05.03 | Plying for hire and no insurance, sentence £345 fine and £245 costs.   |
| 18.08.03 | Licensing Committee review of Licence, warning given by the Committee  |
| 28.01.07 | Assault, simple caution issued by the police   |

- |          |  |
|----------|--|
| 30.05.07 | No insurance, sentence £200 fine, £225.50 costs and 6 penalty points   |
| 24.09.07 | Licensing Committee review of Licence, warning given by the Committee  |
| 04.12.10 | Parked in a hackney carriage rank, given a warning by officers   |
| 20.03.13 | Failed to wear private hire vehicle identification badge, given a warning by officers  |
| 19.11.13 | Drove his private hire vehicle into a bus lane, given a warning by officers  |
| 26.04.18 | Driving over a zebra crossing on the wrong side of the road near a school, licence revoked with immediate effect by offices, sentenced at court and issued 6 penalty points. |
| 17.06.22 | Excess Speed, sentence 3 penalty points  |
7. The Policy stated that a serious view is to be taken of any applicant who had been convicted of a driving offence that resulted in the loss of life and unless there were exceptional circumstances a licence would be refused where the applicant had a conviction for an offence of causing death by dangerous driving.
  8. The Committee decided to depart from its Policy as the applicant had previously been licensed by the Council and had been granted a licence to drive public service vehicles from the traffic commissioners since 2021. That the applicant confirmed he had attended a hearing with the traffic commissioners who considered his offences but still granted the licence and the driver said the offence took place when he was 18.
  9. The Policy stated applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive the public safely. The Policy stated if an applicant had a significant history of offences, showing a disregard for safety, a licence would not be considered unless there was a conviction or incident free period of at least five years from the last conviction or incident. There was a significant history of driving offences and incidents the last being speeding on 17 June 2022, meaning there was only an incident free period of less than one year.
  10. The Committee decided to depart from its Policy for the following reasons. The applicant had been driving minibuses and licensed by the Traffic Commissioners since 2021, that the applicant informed the Committee he had completed an advanced driving scheme and test when he obtained his PSV licence, that the Traffic Commissioner considered all his offences before granting the licence and that there were no incidents between 2018 and 2022.
  11. The Committee decided to condition the licence that the applicant must attend and complete a Driver Improvement Scheme, at his own expense, approved by the Council, within three months. This was because the applicant was convicted for speeding after he obtained his PSV licence, and the course would improve his driving in the interests of public safety.
  12. This decision was final and there was no internal or statutory route of appeal, however, the applicant had the option of judicially reviewing the lawfulness of the decision to the High Court if grounds have been made out. If an applicant decides to challenge the decision by way of judicial review, it was advised an applicant seeks independent legal advice as to the grounds and time limits that may apply. Please note the Council will apply for any costs it incurs in defending its decision.

24 April 2023

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: 06/23, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant, 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 and highlighted that an amendment was required to the offence detailed at 1). The offence was dealt with in Court on 30 March 2023 and was, therefore, a conviction and not a caution as stated in the report.

The report outlined that the application was made in November 2022, however, the applicant had failed to declare the offence that had taken place in September 2022. The relevant section of the application form was attached at Appendix 1. The applicant now appeared before Committee as a result of the offence detailed at 1).

The applicant was interviewed by a Licensing Enforcement Officer on 4 April 2023 when he provided an explanation in relation to the offence at 1) and confirmed that there were no other offences of which the Council was unaware. A copy of the applicant's Community Order was attached at Appendix 2 for information.

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

The applicant presented the 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 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: 06/23, 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 was satisfied the driver was 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.
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 to 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 the licence. The reasons for the decision were as follows:-

#### Reasons

5. The applicant was convicted of an offence of battery and sentenced to a community order and a requirement to carry out 80 hours unpaid work on 2 February 2023.

6. The applicant had also failed to declare when he completed his application form on 8 November 2022 that “he was aware of any enquiries or investigations of any kind being made by the police or the local authority”.
7. In summary, the applicant claimed that following an argument, his wife was on his phone, that he grabbed the phone and charger from his wife which had hit his wife in the face and bruised her forehead. His wife had fled to neighbours, he followed his wife out of the house then kicked his leg at head height but did not strike his wife.
8. The Committee cannot go behind a conviction, the applicant had pleaded guilty and there was sufficient evidence for the CPS to prosecute for an offence which resulted in bodily harm to his wife. The incident was serious enough for a neighbour to call the Police and provide footage. The applicant confirmed he was a black belt in martial arts and the Committee was seriously concerned that he appeared to not fully appreciate his wrongdoing by harming his wife and kicking at his wife.
9. The applicant was arrested and would have been on Police bail until the court hearing and clearly was under investigation. The Committee was seriously concerned that the applicant failed to declare this information on his application form.
10. The Policy was clear which was in line with Statutory Standards. Licensed Drivers were in an extreme position of trust and often provoked by passengers. The Policy confirmed the position with domestic violence, in that the Committee takes it extremely seriously, because if an individual was prepared to assault a person in a domestic home environment there were serious concerns over the person’s ability to maintain their temper in a high stress environment dealing with members of the public. A person who responded with violence when provoked was not suitable to be granted a licence.
11. The Standard was set high in relation to violence. A firm line must be taken with those who had a conviction of violence or involved in a violent act. This was why the Policy and the National Statutory Standards required a period of at least 10 years free of any further involvement in violence since the last conviction or completion of any sentence. This was to ensure so far as possible the public were safe. The applicant was still serving his sentence and was only convicted in February 2023.
12. In addition the Policy and the Statutory Standards confirmed where an applicant failed to declare investigations or convictions on his application form, then called into question his honesty and suitability. Where a false declaration had been made, as in this case, an application should be refused.
13. The Committee considered there were no grounds to depart from the Policy and it must protect the public. Therefore, in accordance with the Policy the Committee rejected the application and does not consider the applicant was safe, suitable or fit and proper to be granted a licence.
14. If the applicant was aggrieved by this decision they may appeal to a Magistrates Court within 21 days from the date of the notice of the decision. The local magistrates for the area was the Teesside Justice Centre, Teesside Magistrates, Victoria Square, Middlesbrough.
15. If the applicant does appeal the decision and the appeal was dismissed by the Magistrates Court, the Council will claim its costs in defending its decision from the applicant which could be in the region of £1,000.