

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on 21 September 2020.

PRESENT: Councillor Arundale (Chair), Councillor Waters (Vice Chair); Councillors: Bell, Dean, Higgins, Hill, Jones, Polano, Rooney, Sands and J Walker.

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

APOLOGIES FOR ABSENCE were submitted on behalf of Councillors Goodchild, Lewis and Smiles.

**** DECLARATIONS OF MEMBERS' INTERESTS**

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

MINUTES OF THE PREVIOUS MEETING OF THE LICENSING COMMITTEE HELD ON 13 JULY 2020

The minutes of the previous meeting of the Licensing Committee held on 13 July 2020 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.

APPLICATION – PRIVATE HIRE VEHICLE DRIVER LICENCE – REF: 03/21

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: 03/21, where circumstances had arisen which required special consideration by the Committee.

The Chair introduced those present and outlined the procedure to be followed. The applicant was in attendance at the meeting, accompanied by his legal representative, 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 that the applicant was first issued a Private Hire Vehicle Driver Licence with Middlesbrough Council in January 2019. He then appeared before Members on 29 July 2019 for review of his licence following a complaint made by the Council's Principal Transport Officer in relation to allegations made by children being transported by the applicant in his private hire vehicle under a home to school contract arrangement, that he had made inappropriate comments to them.

That matter was immediately referred to the Council's Local Authority Designated Officer (LADO) and a decision was made to suspend the driver's licence with immediate effect, pending its consideration at Licensing Committee. At the Licensing Committee on 29 July 2019, Members determined to reinstate the driver's licence as there had been discrepancies in the evidence provided. A copy of the minutes from that meeting were attached at Appendix 1.

On 30 April 2020, information was received from Cleveland Police that the applicant had been arrested for the alleged offence of rape of a female aged 16 or over. The information stated that a 17-year-old female had been picked up in the applicant's taxi and driven to his home address where he had raped her. The information also stated that the female and the applicant had exchanged social media contact details during a previous taxi journey.

The applicant was contacted by Licensing Officers on 5 May 2020 in relation to the allegation which he denied, however, he did admit to having consensual sex with the female. The applicant further stated that the female had never previously been in his taxi and that she had contacted him. He also stated that he had thought that the female was aged between 21-25 and not 17. A copy of the transcript from the telephone conversation was attached at Appendix 3.

Acting under Delegated Authority, on 7 May 2020, the Licensing Manager revoked the applicant's Private Hire Vehicle Driver Licence, with immediate effect, as a result of the information provided by the Police and due to previous safeguarding concerns. A copy of the revocation notice was attached at Appendix 2.

On 13 July 2020, the Police informed the applicant that no further action would be taken against him as there was insufficient evidence and on 22 July 2020 he made a fresh application for a Private Hire Vehicle Driver Licence. The applicant was interviewed by a Licensing Officer on 20 August 2020. The applicant confirmed his earlier explanations in relation to his appearance before Members on 29 July 2019 (not 30 September 2019 as stated in the report) and stated that the information provided on 5 May 2020 (Appendix 3) was not true or accurate. A copy of the notes from the interview were attached at Appendix 4.

During the interview, the applicant provided copies of mobile phone messages between himself and the female and these were attached at Appendix 5. The applicant also provided a copy of the letter from Cleveland Police, dated 13 July 2020, stating that no further action would be taken against him. This was attached at Appendix 6.

Officers were particularly concerned in relation to references to drug taking in the text messages between the applicant and the female. The applicant was subsequently invited to attend the Licensing Office on 10 September 2020 to provide a saliva sample to enable a drugs test to be conducted. The results of the test were negative and these were attached at Appendix 7.

The applicant's legal representative confirmed that the report was an accurate representation of the facts, however, in relation to Appendix 3, transcript of the telephone conversation between the applicant and Licensing Officer, the applicant denied ever saying that the female had never been a passenger in his taxi.

The applicant's legal representative presented the case on behalf of the applicant. The legal representative and applicant 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 his legal representative, 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 interested parties returned and the Chair announced the Committee's decision.

ORDERED that the application for a Private Hire Vehicle Driver Licence, Ref 03/21 be refused.

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

1. Under Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, as the Committee was not satisfied that the applicant was a fit and proper person to hold such a licence, the Committee ORDERED that the application for a Private Hire Vehicle Driver Licence, Ref 03/21, be refused.

The reasons for the decision were as follows:-

2. The Committee carefully considered: the application based upon the report and appendices; the representations of the applicant and his Solicitor; and Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018. The matter was considered on its own merits.

3. The applicant appeared before the Licensing Committee as a result of his application for a Private Hire Vehicle Driver Licence following the revocation of his licence, by delegated decision on 7 May 2020, on the grounds of "...any other reasonable cause..." following information received from the Police that on 30 April 2020, the applicant was arrested for the alleged offence of rape. Following that revocation the applicant had the opportunity to appeal that decision to the Magistrates Court but did not do so. Revocation was effective immediately on that date in the interests of public safety.
4. The applicant submitted a fresh application. The applicant and his solicitor were given the opportunity to address the Committee in respect of allegation. It was noted from the evidence provided and in oral submissions from the applicant's solicitor, that the Police had reviewed the material and decided that there was insufficient evidence to progress the case to the Crown Prosecution Service and that no further action would be taken in respect of the allegation. This decision was conveyed to the applicant by letter, dated 13 July 2020, from Cleveland Police.
5. The Committee was provided with a number of Facebook Messenger messages between the applicant and the passenger dated between 25 April 2020 and 28 April 2020. The applicant in his 'Record of Pre-Committee Interview' accepted that he picked the passenger up on Saturday 25 April 2020 and also admitted that he had provided the passenger with his name as she had asked for his Facebook details. She added him to Facebook that same evening.
6. The messages between the applicant and the passenger made reference to drugs and alcohol. The applicant's solicitor advanced on the applicant's behalf, that he did not know what the reference to "sniff" was at the time of the messages. This was further confirmed by the applicant in his 'Record of Pre Committee Interview'. The applicant admitted in his 'Record of Pre-Committee Interview', and the evidence supported, that he would like to perform a sex act on her and the applicant accepted that he had sex with her on Tuesday 28 September 2020 at his house. The passenger was 17 years of age.
7. The applicant's solicitor submitted, on behalf of the applicant, that the sex was consensual and was not in effect as a result of the applicant conducting his business as a Private Hire Driver.
8. Having heard the representations, and having due regard to Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018 and the overriding aim of the licensing regime being the protection of the public, the Committee concluded that the applicant was not a fit and proper person in accordance with section 51 of the Local Government (Miscellaneous Provisions) Act 1976.
9. In reaching its conclusion, the Committee considered the applicant's suitability taking into account a number of factors as presented to them and the Committee formed the view that the relationship between the applicant and the passenger commenced during the course of his duties as a Private Hire Driver. The applicant had purchased alcohol for a minor and the applicant's version of events in respect of the reference to 'sniff' was not credible and as such had conducted himself in a manner not consistent with a fit and proper person to be a Private Hire Driver. In support of this decision the Committee considered '*Leeds City Council v Hussain 2002*' where the courts found that "...one purpose of licensing powers was to prevent licences being given to, or used by, those who were not suitable, taking into account their driving records, driving experience, sobriety, mental and physical fitness, honesty and ensuring that they would not take advantage of their employment to abuse or assault passengers...". Therefore, the refusal aligned with the aims and objectives of Middlesbrough Council's Private Hire and Hackney Carriage Licensing Policy 2018 and as such the application was refused.
10. The applicant was advised that if he was aggrieved by the Committee's decision he had 21 days in which to appeal the decision to Teesside Magistrates' Court. Should the applicant decide to appeal the decision and the appeal was dismissed, the Council would look to the court for an Order to recover its costs incurred in defending its decision from the applicant.