

LICENSING COMMITTEE

A meeting of the Licensing Committee was held on Monday 14 December 2020.

PRESENT: Councillors R Arundale (Chair), A Waters (Vice-Chair), A Bell, S Dean, J Goodchild, T Higgins, S Hill, D Jones, L Lewis, E Polano and D Rooney

OFFICERS: S Bonner, J Dixon, C Cunningham, T Hodgkinson, S Morris and J McNally

APOLOGIES FOR ABSENCE: Councillors R Sands, M Smiles and J Walker

20/13 **DECLARATIONS OF INTEREST**

There were no declarations of interest made by Members at this point in the meeting.

20/14 **MINUTES- LICENSING COMMITTEE HELD ON 21 SEPTEMBER 2020**

The minutes of the previous meeting of the Licensing Committee held on 21 September 2020 were submitted and approved as a correct record.

20/15 **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.

20/16 **REVIEW OF PRIVATE HIRE VEHICLE DRIVER LICENCE & APPEAL AGAINST A WRITTEN WARNING - REF NO: 04/20**

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: 04/20, as the driver had appealed against a written warning issued to him by a Licensing Enforcement Officer following a complaint about his behaviour.

The Licensing Manager updated Members that the driver had contacted the Licensing Office to advise that he was unwell and unable to attend the meeting. In order to afford the driver a further opportunity to attend, it was requested that the matter be deferred to the next meeting.

ORDERED that consideration of the Review of Private Hire Vehicle driver licence, Ref No: 04/20 be deferred to the next meeting in order to afford the driver a further opportunity to attend.

20/17 **REVIEW OF COMBINED HACKNEY CARRIAGE & PRIVATE HIRE VEHICLE DRIVER LICENCE - REF NO: 05/20**

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: 05/20, 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 was in attendance at the meeting 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 driver was first licensed with Middlesbrough Council in September 2007. He first appeared before Members on 9 December 2019 for review of his licence following the offence listed at 1) in the report and a complaint made by a member of staff at the Gleneagles Resource Centre in relation to his driving.

As a result of the complaint, and CCTV evidence, Officers suspended the driver's licence with immediate effect pending review by the Committee on 9 December 2019. On that occasion, Members decided to reinstate the driver's licence but issued the driver with a warning regarding his dangerous driving.

The driver now appeared before Members in relation to the offence at 2) in the report. It was highlighted that the driver failed to notify the Licensing Office within seven days of the offence, as required by condition on his licence. It was further highlighted that the driver had failed to declare the offence at 1) when he had renewed his licence in August 2019.

The driver was interviewed by a Licensing Enforcement Officer on 26 November 2020 when he confirmed his earlier explanation in relation to the offence at 1) and provided an explanation for the offence at 2).

In addition, Officers had concerns with the driver's non-compliance with requests for information on three separate occasions. On each occasion the driver did not respond to requests for information until Officers suspended his licence.

In response to a query, it was confirmed that the driver currently had nine penalty points on his DVLA licence.

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

The driver addressed the Committee and provided his explanation in relation to the offences 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 interested parties returned and the Chair announced the Committee's decision.

ORDERED that Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 05/20 be suspended for a period of four weeks and that the driver be required to complete the Driver Improvement Scheme, at his own expense, within three months.

Authority to act

1. Under Section 61 of the Local Government Miscellaneous Provisions Act 1976 ("the Act") the Committee may revoke or suspend a Hackney Carriage/Private Hire 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 the 1 November 2019 ("the Policy"), the report and the representations made by the driver.
3. The review of the licence was considered on its own particular facts and on its merits.

Decision

4. After carefully considering all of the information the Licensing Committee decided to require the driver to attend a Council approved Driver Improvement Scheme within three months of the date of this decision, at his own expense. The Committee also decided to suspend the driver's Combined Hackney Carriage and Private Hire Vehicle licence for a period of four weeks under Section 61 of the Act on the grounds of any other reasonable cause.

Reasons

5. The Committee considered the driver's history on the whole in order to assess the driver's suitability to continue to be licensed.
6. The Policy stated 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. It stated the Council took a serious view if a licensed driver committed a motoring offence as driving was his profession, he had a responsibility to ensure he drove his passengers safely and was not a risk to other road users.
7. The Policy stated 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 will 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 his own expense.
8. The Policy also stated, if a driver had driven unsafely as a result of minor traffic offences or upheld complaints about his driving standards, putting the public at risk, depending on the severity of the risk, the Council may require the driver to attend a driver improvement course at his own expense and/or suspend or revoke the licence.
9. The driver was convicted of using his Hackney Carriage whilst having defective tyres on 28 September 2018 for which he received three penalty points and a fine of £440. The driver was convicted on 4 October 2019 for failing to provide information as to the identity of the driver of his vehicle. This offence related to a driving offence and he was given six penalty points. On 22 October 2019, the driver had driven in a dangerous manner next to a centre for disabled children. The driver currently had nine points on his DVLA licence.
10. The Policy stated that applicants or existing licence holders that were found to have intentionally misled the Council, or lied as part of the application process, will not be issued with a licence. The Statutory Taxi and Private Hire Vehicle Standards stated "a failure by a licence holder to disclose an arrest that the issuing authority is subsequently advised of might be seen as behaviour that questions honesty and therefore the suitability of the licence holder regardless of the outcome of the initial allegation".
11. The driver breached his licensing conditions on two occasions when he failed to report his convictions to Licensing Officers. Also, Officers found it necessary to suspend the licence for three short periods in January, February and August 2020 as a result of the driver failing to provide required Disclosure Barring Services information. It was essential that drivers complied with Officers' requests and that convictions were reported as soon as possible to enable Officers to quickly assess whether a driver was a risk to the public. The driver admitted he did not want to report the conviction on 4 October 2019 for fear of reprisals in respect of his licence.
12. The Committee noted that the driver's licence was suspended between October and December 2019 and he was given a warning in respect of his driving standards in relation to the driving incident on 22 October 2019. However, since that date the further traffic conviction on 4 October 2019 was revealed.
13. The Committee considered the driver did not appear to take responsibility for his actions. The Committee did not consider his reasoning for not being aware of convictions or the requirement to provide information due to postal issues to be credible.
14. The Committee considered the driver had put the public at risk and was required to attend a driver improvement course, approved by the Council, within three months from the date of this decision, at his own expense, which should improve his driving standards and awareness of risks.
15. In view of the driver's poor driving standards, his failure to respond to Officer requests and report convictions the Committee decided, on this occasion in view that he had been

licensed since 2007, to stop short of revoking his licence but to issue a suspension for a period of four weeks. The Committee considered the suspension should deter the driver from driving unsafely and ensure he complies with disclosure requirements in the future.

16. The decision was in accordance with the Policy and the Committee considered there were no good reasons to depart from it.

Appeal

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.

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.

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

REVIEW – COMBINED HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER LICENCE – REF NO: 06/20

With the permission of the Chair, the Licensing Manager submitted information for consideration by the Committee that required an urgent decision.

The Licensing Manager informed Members that, under the Notifiable Occupation Scheme, on 8 December 2020, Cleveland Police had notified the Licensing Office that the driver had been arrested for the alleged offences of 'facilitate the acquisition/acquire/possess criminal property', possession of a controlled drug – class B – cannabis resin' and possessing controlled drug with intent to supply – class A – other, and that he had been released under investigation.

Background information relating to the circumstances leading to the driver's arrest were provided to the Committee, including further information provided by the Police on 14 December 2020 and verbal representations made by the driver.

The Committee was advised that the driver had appeared before Members on 25 July 2015 for consideration of his licence application. Member's considered his offence for possession of a controlled drug – Class B – Cannabis. On that occasion, Members decided to depart from the Licensing Policy due to exceptional circumstances and granted his licence.

The Licensing Manager and Principal Licensing Officer responded to questions from Members and the Council's legal representative.

It was confirmed that there were no further questions and the Licensing Manager and Principal Licensing Officer withdrew from the meeting whilst the Committee determined the review.

Subsequently, all interested parties returned and the Chair announced the Committee's decision.

ORDERED that Combined Hackney Carriage and Private Hire Vehicle Driver Licence, Ref 06/20 be revoked with immediate effect.

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. Under Section 61(2B) of the Act, if it appeared to be in the interests of public safety, the Committee could decide that the revocation was to have immediate effect.
3. 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 representations from the Police, the operator and the driver.
4. The review of the licence was considered on its own particular facts and on its merits.

Decision

5. After carefully considering all of the information the Licensing Committee decided to revoke the driver's Combined Hackney Carriage and Private Hire Vehicle driver's licence on the grounds of any other reasonable cause. It decided that the revocation was to have immediate effect in the interests of public safety under section 61(2B) of the Act.

Reasons

6. In the interests of public safety the matter was tabled as an urgent item before the Committee. In view of the urgency the driver was not invited to attend the Committee but his verbal representations made to the Licensing Officer were considered by the Committee.
7. The Police had informed Licensing Officers on 8 December 2020 that the driver had been arrested on 7 December 2020 for the alleged offences of 'Facilitate the acquisition/acquire/possess criminal property', 'Possess controlled drug-class B – cannabis/cannabis resin' and 'Possessing controlled drug w/l to supply – class A – other'. The Police in the letter stated that the circumstances are that Police carried out a Section 18 search of the driver's address and a large amount of cash was found also an amount of drugs, multiple phones and credit cards in numerous names.
8. Attempts were made by the Licensing Officers to contact the driver on 11 December 2020 which was successful and on the 14 December 2020 at 11.50am and 12.30pm, when messages were left and no calls were returned.
9. On 11 December 2020 the driver informed the Licensing Officer by telephone that he wished for a fair opportunity to continue to work whilst the Police investigated the matter and as there were other people in the house at the time of the search which also lead to the arrest of his brother, he didn't believe he should take responsibility for the actions of others.
10. The driver confirmed to the Officer that cannabis had been found in his vehicle and that it had belonged to his friend. He also confirmed that Police had found £400 on his person which he stated was 'cash in hand' from his taxi work. The driver also stated that the Police reference to Class A drugs related to 'cream chargers' (nitrous oxide) which could be bought on the internet.
11. The Operator confirmed that the driver had last worked for them on 23 October 2020 which contradicted the amount of cash in the taxi claimed to be takings. However, the Committee noted that the driver was also a Hackney Carriage driver and such work would not be logged by the Operator.
12. The Police further confirmed verbally to the Licensing Officer that there was a report of four males sitting in a taxi smoking cannabis and taking nitrous oxide, that cannabis was found in his taxi and a sum of £500 cash was found.
13. The Committee noted that on 25 July 2016, the driver's application for a licence was put before Committee because of a conviction for possession of cannabis on 14 December 2015. At that time the Committee decided to depart from the Council's Policy and grant the application for a combined Hackney Carriage and Private Hire Vehicle driver's licence giving him the benefit of the doubt.
14. The Policy stated an isolated conviction, caution, reprimand or final warning issued for a drug related non-driving offence should be required to show a period of at least three years free of incident before an application was considered. It stated if the conviction, caution,

reprimand, etc related to the supply or possession with intention to supply or the production of controlled drugs, or if an applicant had more than one conviction for drugs then an application would be refused irrespective of the time passed. This was because of the drug problems in Middlesbrough and the risk to the public.

15. The Policy stated, if a driver was arrested or charged with an offence, depending on the severity of the risk to the public, they should expect to have their licence suspended or revoked. If there was a risk to public safety that suspension or revocation may have immediate effect.
16. The Committee noted that current Case Authority stated that a suspension could not be used as an interim measure and it was a final sanction imposed in response to an act or incident. Therefore, the Committee could not suspend the licence whilst investigations were being carried out by the Police.
17. The driver had been arrested for three offences relating to drugs - drugs were found in the driver's taxi, a report was made that people were smoking cannabis and taking nitrous oxide in the taxi; the Police found sufficient drugs and other paraphernalia linked to the drugs trade including a large amount of cash and credit cards in different names in the driver's home to warrant an arrest for an offence of possession with the intent to supply class A drugs. In view of the above, although the driver was still under investigation, the Committee decided it must revoke the Combined Hackney Carriage and Private Hire Vehicle driver's licence in order to protect the public. The driver's previous conviction for possession of cannabis supported the decision.
18. The Committee considered that it was extremely dangerous to passengers and other road users if a driver was involved in drugs or associated with drug takers. There was a risk of the driver being under the influence of drugs whilst carrying passengers or driving. The risk to the drug problem in Middlesbrough was serious in that drugs can be supplied or transported under the guise of a legitimate taxi. Also there was a risk to the public if a driver was associated with drug users or people in the drugs trade.
19. The representations did not lower the threat to the public, nor were they credible, especially the explanation that the nitrous oxide was legitimate. There were sufficient drugs and other items found for the Police to make the arrests for the three offences.
20. In view of the above reasons the Committee considered there to be a serious risk to public safety and therefore the revocation was to have immediate effect.

Appeal

21. 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.

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.