



Complete Agenda

Democratic Services
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Meeting

GENERAL LICENSING COMMITTEE

Date and Time

10.00 am, MONDAY, 12TH DECEMBER, 2016

Location

**Siambr Hywel Dda, Council Offices,
Caernarfon, Gwynedd, LL55 1SH**

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(DISTRIBUTED Friday, 2 December 2016)

GENERAL LICENSING COMMITTEE

MEMBERSHIP (15)

Plaid Cymru (8)

Councillors

Annwen Daniels
Christopher Hughes
W. Tudor Owen
John Wyn Williams

Annwen Hughes
Dilwyn Morgan
Ann Williams
R. H. Wyn Williams

Independent (5)

Councillors

John Brynmor Hughes
Eryl Jones-Williams
Louise Hughes

Angela Russell
Elfed Williams

Llais Gwynedd (2)

Councillors

Anwen J. Davies

Peter Read

Aelodau Ex-officio / Ex-officio Members

Chairman and Vice-Chairman of the Council

A G E N D A

1. APOLOGIES

To receive any apologies for absence.

2. DECLARATION OF PERSONAL INTEREST

To receive any declaration of personal interest.

3. URGENT ITEMS

To note any items that are a matter of urgency in the view of the Chairman for consideration.

4. MINUTES

4 - 5

The Chairman shall propose that the minutes of the meeting of this Committee, held on 20.06.2016 be signed as a true record.

5. GENERAL LICENSING SUB-COMMITTEE MINUTES

6 - 12

To submit, for information, minutes of the General Licensing Sub-committee meeting held on the following date –

- a) 25.05.16
- b) 04.10.16
- c) 19.10.16

6. TAXI LICENSING AND THE IMMIGRATION ACT 2016

13 - 15

To consider the Head of Regulatory Services report

7. FFORDD GWYNEDD - LICENSING EXCERSISE

Oral update from the Licensing Manager

Agenda Item 4

GENERAL LICENSING COMMITTEE, 20.06.16

Present:

Councillors Annwen Daniels, Annwen Hughes, John Brynmor Hughes, Louise Hughes, Eryl Jones-Williams, Tudor Owen, Angela Russell, Ann Williams, Elfed W. Williams and John Wyn Williams

Also in Attendance: Gareth Jones (Senior Planning and Environment Manager), Gwenan Mai Roberts (Licensing Manager), Rhun ap Gareth (Senior Services Solicitor), Eirlys Jones (Licensing Manager) and Lowri Haf Evans (Member Support Officer)

Councillor Eryl Jones Williams took the opportunity to thank members and officers for their support during his period as Chairman.

1. ELECTION OF CHAIR

Resolved to elect Councillor Tudor Owen as Chairman of this Committee for 2016 - 2017.

Councillor Eryl Jones-Williams was thanked for his work as Chairman of the Committee for 2014-2016.

2. ELECTION OF VICE-CHAIR

Resolved to elect Councillor Annwen Hughes as Vice-chair of the Committee for the period of 2016-17.

3. APOLOGIES

Apologies were received from Councillors Peter Read and Wyn Williams and Geraint Brython (Solicitor).

4. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

5. URGENT ITEMS

None to note

6. MINUTES OF THE PREVIOUS MEETING

The Chairman signed the minutes of the previous meeting of this committee that took place on 7th March 2016, as a true record subject to noting that Councillor Angela Russell was present.

7. MINUTES OF THE GENERAL LICENSING SUB-COMMITTEES

Submitted, for information, the minutes of the meetings of the General Licensing Sub-committee that took place on 07.03.16 and 05.04.16.

8. FFORDD GWYNEDD - LICENSING EXERCISE

An oral update was received from the Senior Planning and Environment Manager on the service's recent exercises reviewing Licensing's work processes to ensure that the people of Gwynedd were central to what was being implemented.

It was noted that the process provided an opportunity for all to have input into the service review. He confirmed that the review had already looked at the purpose of the service, performance indicators, seeking the views of customers and reviewing current work processes. It was reported that the exercise, despite being intensive, had a positive input from all the licensing Unit staff.

Observations arising from the discussion;

- Need to ensure consistency with taxi fees - request for this to be included in the revised policy
- It was suggested that specialist training should be offered to taxi drivers in the context of child safety.
- Suggestion to collaborate closer with the contracting companies to ensure compliance with contract conditions and public safety
- It was suggested that consideration should be given for taxi drivers to receive first aid training. Although it was not a statutory requirement, it would be seen as good practice - request for this to be included in the policy review.

The meeting commenced at 10.50am and concluded at 11.15am.

LICENSING SUB-COMMITTEE 25.05.2016

Present: Councillor Eryl Jones Williams (Chair), Councillors Angel Russell and Elfed Williams

Officers: Geraint B Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager), Ellen Robinson - observer (Transport Officer Education and Social Services) and Lowri Haf Evans (Member Support Officer).

1. WELCOME and APOLOGIES

Everyone was welcomed to the meeting by the Chairman, Councillor Eryl Jones Williams. The panel and the officers were introduced to everyone present.

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12 A, of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, nor their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR HACKNEY / PRIVATE HIRE DRIVER'S LICENCE

- a) The Licensing Manager presented the written report on the application received from Mr A. for a new hackney/private hire driver's licence.
- b) It was reiterated that a statement of convictions had been submitted and the statement noted that the applicant had a conviction that was relevant to licensing taxi drivers. The Committee was asked to consider the application in accordance with the DBS record, and in accordance with the guidelines on relevant crimes and convictions.
- c) The applicant was invited to expand on his application. He expanded on the background to his conviction and he highlighted his wish to get work in order to support his family. He also noted that he had received a message from a local company offering him work if the licence was approved.
- ch) Supporting Mr A's application was a support worker and it was confirmed that he had known the applicant for several years. He noted that the applicant was an honest person who had been seeking work for over five years to support his family. It was

confirmed that the applicant had received an offer of work by a local company if the licence was approved.

- d) The applicant and the support worker withdrew from the room while the Sub-committee members discussed the application.
- dd) The Sub-committee accepted the information recorded in the DBS statement as a correct description of the events. The Sub-committee was reminded, in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976, that a licence cannot be issued unless they were satisfied that the applicant was a fit and proper person to hold a licence.
- e) In reaching their decision, the Sub-committee had considered the following factors:
- the requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire'
 - the applicant's application form
 - the Licensing Department's report along with the DBS statement
 - verbal observations by the applicant and the support worker
 - that the applicant had previous convictions :
 - the offence, although it involved violence, had occurred over three years ago and therefore did not merit an automatic ban under paragraph 6.5 of the Council's policy.
 - the six months driving ban. When discussing paragraph 12.9 of the Policy, the Sub-committee considered that the brief driving ban that expired over a year ago was not a sufficient reason to not give the applicant a licence.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence and Mr A's application for a hackney vehicle/private hire licence was granted.

The meeting commenced at 2:00pm and concluded at 3:00pm.

GENERAL LICENSING SUB-COMMITTEE

04.10.16

Present: Councillor Eryl Jones Williams (Chair), Councillors Annwen Hughes and Louise Hughes

Officers: Geraint B. Edwards (Solicitor), Heilyn Williams (Licensing Officer) and Glynda O'Brien (Member Support Officer).

1. WELCOME and APOLOGIES

The Chair, Councillor Eryl Jones Williams, welcomed everyone to the meeting. The panel and the officers were introduced to everyone present.

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12 A, of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, nor their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. (i) APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE (MR A)

- a) The Licensing Officer presented the written report on the application received from Mr A for a new hackney/private hire driver's licence.
- b) It was reiterated that a statement of convictions had been submitted and the statement noted that the applicant had a conviction that was relevant to licensing taxi drivers. The Committee was asked to consider the application in accordance with the DBS record, and in accordance with the guidelines on relevant crimes and convictions.
- c) The applicant was invited to elaborate on his application and especially the conviction of battery that took place in 2011, noting that it was a domestic incident between him and his wife. His wife did not take up a case against him but, as the incident had been seen on closed circuit television, the Crown Prosecution Service took action against him. He confirmed to the Panel that he still lived with his wife and had had two children since the incident and that another was due.

- ch) An email message was submitted in support of Mr A's application from a Police Inspector, stating that he had known him for over 20 years. He expressed that Mr A was a bright, eloquent and kind person. He was a sensible person at all times and that the previous conviction had been an event that was completely out of character. He would have no concern in offering Mr A employment and wished him success in gaining a taxi driver's licence.
- d) Mr A responded to a number of questions from the Panel Members including issues about his work, reasons for submitting the application etc.
- (dd) The applicant and the Licensing Officer withdrew from the room while the Sub-committee members discussed the application.
- (e) In reaching their decision, the Sub-committee had considered the following factors:
- the requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire'
 - the applicant's application form
 - the Licensing Department's report along with the DBS statement
 - verbal observations by the applicant
 - an email of support from a Police Inspector
 - that the applicant had previous convictions:
 - the convictions had been for criminal damage in 1990 and 1991 which had taken place 26 and 25 years ago.
 - That the drink driving conviction in 1998 had taken place 16 years ago and the conviction for battery had taken place in 2011, 5 1/2 years ago.
 - Although the above convictions were serious, they had taken place years ago

Under paragraphs 6.5 and 11.3 of the relevant policy, and considering that over three years had passed in relation to all convictions, the Sub-committee did not consider these convictions to be sufficient ground for refusing the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence and Mr A's application for a hackney vehicle/private hire licence was granted.

(ii) APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE (MR B)

The Sub-committee expressed disappointment that the applicant was not present at the Sub-committee and as such:

RESOLVED: (a) the decision on the above application would be deferred, with regard to the fact that the applicant was not present and that the Sub-committee needed more information and a further explanation from the applicant about the convictions.

(b) A request was made that the Licensing Officer contact the applicant suggesting that he submit testimonial letters in support of

**his application from an employer and / or prospective employer
before the Sub-committee further considers his application.**

The meeting commenced at 10:30am and concluded at 12:20pm.

GENERAL LICENSING SUB-COMMITTEE 19.10.2016

Present: Councillor Tudor Owen (Chair), Councillors Ann Williams and John Wyn Williams

Officers: Geraint B Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager), and Lowri Haf Evans (Member Support Officer).

1. WELCOME and APOLOGIES

Everyone was welcomed to the meeting by the Chairman, Councillor Tudor Owen. The panel and the officers were introduced to everyone present.

2. DECLARATION OF PERSONAL INTEREST

No declarations of personal interest were received from any members present.

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

RESOLVED to exclude the press and public from the meeting during the discussion on the following items due to the likely disclosure of exempt information as defined in paragraphs 12 and 13, Part 4, Schedule 12 A, of the Local Government Act 1972. These paragraphs applied as the individuals in question were entitled to privacy and there was no overriding public interest that required the disclosure of personal information relating to those individuals, nor their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. APPLICATION FOR HACKNEY / PRIVATE HIRE DRIVER'S LICENCE

- a) The Licensing Manager presented the written report on the application received from Mr A for a new hackney/private hire driver's licence.
- b) It was confirmed that a statement of convictions had been submitted and the statement noted that the applicant had a conviction that was relevant to taxi driver licensing. The Committee was asked to consider the application in accordance with the DBS record, and in accordance with the guidelines on relevant crimes and convictions.
- c) The applicant was invited to expand on his application. He expanded on the background to his conviction and apologised for not stating those convictions on his application form. He expressed his wish to work in order to contribute to his children's university expenses and to support himself and his household. He brought up the fact that he already drove lorries and construction vehicles at his existing job and that thorough checks had been carried out on his health and his ability to drive safely.

- ch) The applicant left the room whilst members of the Sub-committee discussed the application.
- dd) The Sub-committee received the information recorded in the DBS statement as an accurate account of events. The Sub-committee was reminded, in accordance with section 59 of the Local Government (Miscellaneous Provisions) Act 1976, that a licence could not be issued unless they were satisfied that the applicant was a fit and proper person to hold a licence.
- d) In reaching their decision, the Sub-committee considered the following factors:
- the requirements of the 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire'
 - the applicant's application form
 - the Licensing Department's report along with the DBS statement
 - verbal observations by the applicant
 - that the applicant had previous convictions:

The conviction relating to the fraudulent use of a driver's licence and an associated conviction of not being able to provide the Police with an insurance certificate were considered to be historical (dated 2000). In accordance with paragraph 8.2 of the Licensing Policy, three years must pass following a conviction for an offence relating to dishonesty before the granting of a licence can be considered. The Sub-committee did not consider this to be a reason for rejecting the application.

The conviction for harassment in 2013 was considered to be historical. According to paragraph 17.1 of the Licensing Policy, 12 months must pass from the date of the warning before the granting of a licence can be considered. But as the event had taken place more than three years previous, the Sub-committee did not consider this to be a reason for refusing the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence and Mr A's application for a hackney vehicle/private hire licence was granted.

The meeting commenced at 2:00pm and concluded at 3:00pm.

COMMITTEE:	GENERAL LICENSING COMMITTEE
DATE:	12 DECEMBER 2016
TITLE:	TAXI LICENSING AND THE IMMIGRATION ACT 2016
PURPOSE:	FOR INFORMATION
AUTHOR:	HEAD OF REGULATORY SERVICES

BACKGROUND

1. The Immigration Act 2016 (the 2016 Act) amends existing licensing regimes in the UK to seek to prevent illegal working in the private hire vehicle and Hackney carriage licensing sector. From the 1st of December 2016, the relevant provisions of the 2016 Act will come in to force to ensure that Licensing Authorities do not to issue licences to illegal immigrants and to discharge this duty through immigration checks. Only persons with a right to remain in the UK and work in the UK can be granted, and then retain either a driver licence (both Hackney and private Hire) or a private hire operators licence.
2. The 2016 Act identifies that the Private Hire and Hackney taxi sector is at high risk from illegal working, due to high levels of self-employment meaning drivers are not subject to the usual right to work checks as a part of an employment relationship.
3. The 2016 Act also embeds other immigration safeguards into existing licensing regimes in respect of the Licensing Act 2003 across the UK. Commencement dates for these provisions have not yet been confirmed, and the Central Licensing Committee will be briefed on these provisions once the Home Office has confirmed commencement dates; and relevant Guidance has been published.
4. **Effect of the new measures**
5. The provisions in the 2016 Act amend existing licensing regimes to prevent people without lawful immigration status and the right to work from holding hackney carriage or a private hire driver or operator licence. This has been achieved by adapting existing licensing legislation contained in the Local Government (Miscellaneous Provisions) Act 1976.
6. The new provisions mean that driver and operator licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from holding such a licence. Where a person's immigration permission to be in the UK (known as their 'leave') is time-limited to less than the statutory length for a driver or operator licence, the licence must be issued for a duration which does not exceed the applicant's period of permission to be in the UK. In the event that the Home Office cuts short or ends a person's permission to be in the UK (referred to as curtailment or revocation), any licence that person holds will automatically lapse.
7. The provisions also add immigration offences and penalties to the list of grounds on which hackney carriage or a private hire driver or operator licence may be suspended or revoked by licensing authorities. In circumstances where the driver or operator licence expires, is revoked or suspended on immigration grounds, it must be returned to the issuing licence authority. Failure to return the licence will be a criminal offence, punishable on conviction in a Magistrates' Court by a fine.

8. Licensing authorities are under a duty not to issue licences to people who are disqualified by their immigration status from holding them. In determining whether someone is disqualified, licensing authorities are under a statutory duty to have regard to guidance issued by the Home Office.
9. The requirement to check the immigration status of licence applicants does not amend or replace the existing 'fit and proper' test that licensing authorities must perform; this includes the obtaining the Certificate of Good Conduct for applicants who have resided abroad for a period of time.
10. **Persons disqualified from holding a licence**

A person is disqualified from holding an hackney carriage or a private hire driver or operator licence by reason of their immigration status if:

- the person requires permission to enter or remain in the UK and has not been granted it; or
- the person's permission to enter or remain in the UK
 - is invalid,
 - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
 - is subject to a condition preventing the person from doing work of that kind.

A person is also disqualified from holding a licence if they are subject to a condition on their permission to be in the UK preventing them from holding a licence, for example, or they are subject to an immigration restriction that does not permit them to work.

11. **Duty of Licensing Authorities**

12. The Officers of the Licensing Unit will be required to undertake several new checks on all new applications or renewal applications, or requests to review current licences from the 1st of December 2016.
13. The Home Office has indicated that Licensing Officers should not make assumptions about a person's right to work in the UK or their immigration status on the basis of their nationality, ethnic or national origin, accent, the colour of their skin or the length of time they have been resident in the UK.
14. The provisions will also impose enforcement duties on Licensing enforcement officers to suspend or revoke Private Hire or Hackney Vehicle licences or Operator licences where the immigration status of a person disqualifies them from holding a licence.
15. The checking requirements in respect of new licence applications or applications to renew is not retrospective; the immigration status of persons whose licences were issued before 1st of December 2016 will not be subject to extra checks until the licence is due for renewal.
16. For those who have limited permission to stay in the UK; the check must be repeated at each subsequent application to renew or extend the licence until such time as the applicant demonstrates that they are entitled to remain indefinitely in the UK, and, as a result, there are no restrictions on their ability to work.

17. For both driver and operators, if the person loses the right to remain in the UK during the lifetime of the licence; the licence ceases to have effect and must be returned to the Licensing authority. Failure to return a licence to the Licensing Authority in these circumstances is a criminal offence .
18. These provisions only apply to the applicant and do not apply to the MOT or other vehicle check. They also do not apply to DVLA driver's licences, although the Immigration Act 2014 and the 2016 Act introduced provisions regarding the issue and revocation of DVLA licences in respect of illegal migrants and provided for a new criminal offence of driving illegally in the UK
19. Licensing Officers must be satisfied that a person is not disqualified from holding a licence **before** a licence is issued.

Checking a person's documents to determine if they can hold the licence comprises **three key steps**:
 - **Obtain** the person's original document(s);
 - **Check** the document(s) in the presence of the applicant; and
 - Make and retain a clear **copy** of the document(s).
20. The Home Office will issue a detailed list of documents which will need to be checked by the Licensing Authority. If the applicant fails to provide the necessary documents; the application or renewal will be refused.
21. In most cases licensing officers should be able to make an assessment that the person is not disqualified from holding a licence by making a visual check of the document(s) against the person presenting them. This will include all cases in which the applicant is a British citizen. The Home Office will be able to provide assistance where the immigration status cannot be verified through the relevant documents.
22. The documents must always be checked in the presence of the applicant so as to verify that the documents are genuine , and that the applicant is the same person as indicated in the documents.
23. Where the licensing officer is satisfied from examining the applicant's documents that there is no restriction on the right to work in the UK; the document checks will not be required upon an application to renew the licence.
24. **Resource implications**
25. Licensing Officers already check some of the documentation required under the Immigration Act 2016 - for the purposes of enabling a DBS Criminal Record check when a renewal or new driver application is received. However, all the checks must be carried out in the presence of the applicant; and the checks may take longer , and initially applications may take longer to be processed. Officers will require additional training in the identification of forged documents.

RECOMMENDATION

To note the contents of the report