



Complete Agenda

Democratic Services
Swyddfa'r Cyngor
CAERNARFON
Gwynedd
LL55 1SH

Meeting

GENERAL LICENSING COMMITTEE

Date and Time

10.00 am, MONDAY, 3RD JUNE, 2019

TO FOLLOW ON FROM THE CENTRAL LICENSING COMMITTEE

Location

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

Contact Point

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(DISTRIBUTED Friday, 24 May 2019)

GENERAL LICENSING COMMITTEE

MEMBERSHIP (15)

Plaid Cymru (8)

Councillors

Steve Collings
Dafydd Owen
Peter Read
Vacant Seat - Plaid Cymru

Annwen Hughes
Edgar Wyn Owen
Elfed Williams
Gareth Jones

Independent (4)

Councillors

John Brynmor Hughes
Jason Wayne Parry

Eryl Jones-Williams
Angela Russell

Llais Gwynedd (1)

Councillor
Gareth Williams

Individual Member (2)

Councillor
Sion W. Jones

Vacant Seat - Individual Member

Ex-officio Members

Chair and Vice-Chair of the Council

A G E N D A

1. ELECT CHAIR

To elect Chair for 2019 - 2020

2. ELECT VICE CHAIR

To elect Vice Chair for 2019 - 2020

3. APOLOGIES

To receive any apologies for absence.

4. DECLARATION OF PERSONAL INTEREST

To receive any declaration of personal interest.

5. URGENT ITEMS

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

6. MINUTES

4 - 5

The Chairman shall propose that the minutes of the meeting of this Committee, held on 11 April 2019 be signed as a true record.

7. GENERAL LICENSING SUB-COMMITTEE MINUTES

6 - 20

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

- a) 16.04.2019
- b) 12.04.2019
- c) 20.03.2019

Agenda Item 6

GENERAL LICENSING COMMITTEE, 11.04.19

Present: Councillors, Steve Collings, Annwen Hughes, John Brynmor Hughes, Dafydd Owen, Edgar Wyn Owen, Peter Read, Angela Russell, Elfed W. Williams and Gareth Williams

Also in Attendance: Gwenan Mai Roberts (Licensing Manager), Geraint Brython Edwards (Solicitor) and Lowri Haf Evans (Member Support Officer)

1. APOLOGIES

Apologies were received from Councillors Eryl Jones-Williams, Siôn Jones and Jason Wayne Parry.

2. DECLARATION OF PERSONAL INTEREST

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

3. URGENT ITEMS

None to note

4. MINUTES OF THE PREVIOUS MEETING

The Chair signed the minutes of a meeting of this Committee, that took place on 10 December 2019, as a true record.

5. MINUTES OF THE GENERAL LICENSING SUB-COMMITTEE

Submitted, for information, the minutes of a meeting of the General Licensing Sub-committee that took place on 20.12.2019

6. MAXIMUM HACKNEY CARRIAGE TAXI FEES

Submitted - the report of the Head of Environment Department, asking the Committee to approve the proposal from the taxi industry to review the maximum fee that may be charged for journeys in a hackney carriage in the County. It was highlighted that it was a requirement that any application to change the maximum fee should be submitted by the industry, and it was confirmed that a recent application to review fees had been submitted by Mr J Pritchard, owner of a local taxi company. It was added that no application to review the maximum fee had been received since 2011, and it was stressed that the maximum fee was not applicable to journeys in private hire vehicles.

Reference was made to a table in the report that compared matching fares for a two mile journey. It was noted that the proposed increase had been calculated by adding inflation at an average of 2.6% per annum, to the journey price per mile specified in 2011. It was

suggested that it was the journey fares within the industry that drove the competition and it was stated that it was unlikely that every company would raise their fares.

The members expressed their thanks for the report.

In response to a question about complaints regarding hackney taxi carriage fees, it was noted that very few complaints had been received from the public and it was more likely that complaints would be submitted by the industry itself.

In response to a question regarding evidence to support the statement that there had been no increase in fuel costs, it was noted that average fuel price graphs across the country by the RAC and AA did not show much difference since 2011.

Observations arising from the ensuing discussion from individual Members:

- That the proposed fee was fair, compared to the average fares in other Counties across north Wales.
- The Licensing Unit was responding to a request from the industry to review fares
- There was no necessity for companies to raise their fares - it was a maximum that was being set
- That fees had increased and therefore it was acceptable to give fair consideration to the proposal by a local company for the fares to be reviewed.

RESOLVED to approve the proposal to increase the maximum fee in order that the taxi company can increase their charge for journeys in a hackney carriage in the County.

7. SUBMISSION OF TERMS OF REFERENCE TO CONSIDER THE CONTENTS OF THE DRAFT COMBINED TAXI LICENSING POLICY

Submitted - a report by the Head of Environment Department requesting the Committee establish a task and finish group from amongst Committee members to consider the contents of the draft combined licensing policy prior to undertaking a public consultation. Members were reminded of the Committee's resolution (11.09.19) to approve. the general direction of the main proposals to review the current policies in relation to taxi licensing and to create a new Combined Taxi Licensing Policy following an increase in the number of applications to licence vehicles contrary to policy and as a result of the Deregulation Act 2015.

It was highlighted that the main aim of the task and finish group would be to consider the draft policy. The group will be required to submit their observations / recommendations to the General Licensing Committee.

In response to a question regarding public liability insurance and the intention to present the requirement for an applicant for a licence to submit evidence of public liability insurance, it was noted that there was no legal requirement for public liability insurance, however, following discussions with the Transportation Unit it was suggested that there was a need to have public liability insurance in place. The proposal was supported and the need for the document to be available in the vehicle was stressed. It was suggested that the insurance company would also wish this.

Observations arising from the ensuing discussion from individual Members:

- It would be wise to consider representatives from Arfon, Dwyfor and Meirionnydd.

RESOLVED to nominate Councillors Annwen Hughes, Angela Russell, Peter Read, Elfed Williams and Edgar Owen as representatives to take part in the Task and Finish Group with Councillor Eryl Jones Williams as a reserve member.

The meeting commenced at 10.00am and concluded at 10.35am.

Agenda Item 7

GENERAL LICENSING SUB-COMMITTEE 16.04.2019

Present: Councillor Eryl Jones-Williams (Chair), Councillors John Brynmor Hughes and Angela Russell

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

1. **APOLOGIES**

None to note

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, or their identities. Consequently, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

5. **APPLICATION FOR A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE- Mr A**

a) The Chairman welcomed everyone to the meeting. He explained that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in using licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr A for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions.

The applicant was invited to expand on his application and provide information about the background to the offences and his personal circumstances. He explained that all the

incidents were from his past and that he now had a good relationship with his former partner and was working hard to support his children.

The applicant withdrew from the room while members of the Sub-committee discussed the application.

b) **RESOLVED - that the applicant was not currently a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.**

c) In reaching its decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing
- the reference he received from his prospective employer
- the Licensing Department's report along with the DBS statement

The applicant was convicted at Gwynedd Magistrates' Court in August 2012 for the offence of destruction to property contrary to section 1 of the Criminal Damage Act 1971. He was ordered to pay compensation of £300 and costs of £85. In December 2012, he was found guilty by Gwynedd Magistrates' Court on two charges of battery. He received a suspended sentence, a community order for 18 months and costs of £200. In October 2013, the applicant was found guilty of a failure to comply with the requirements of a Community Order contrary to the requirements of the Criminal Justice Act 2003. He was fined £50 and ordered to pay £50 costs.

ch) Paragraph 2.2 of the Council's Policy was considered. This states that a person convicted of a serious offence need not be permanently barred from obtaining a licence, but should be expected to be free from conviction for an appropriate period as stated in the Policy, and to show evidence that he was a fit and proper person to hold a licence. The applicant had a responsibility to show that he is a fit and proper person.

Paragraph 4.5 of the Council policy was considered, which stated that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allowed the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise under the 1974 Act.

Paragraph 6 of the Policy deals with offences of violence, and paragraph 6.5 states that an application for a licence will normally be refused if the applicant has a matter of common assault to be considered which occurred less than three years before the application date. The paragraph lists offences that deal with criminal damage and common assaults. Paragraph 6.6 states that an application will normally be refused if an applicant has more than one conviction in the last 10 years for an offence of a violent nature.

Paragraph 16.1 of the Council's policy deals with repeat offending. Firstly, it is necessary to ensure that the convictions, independently, satisfy the policy guidelines, but that, collectively, they create a history of repeat offending that indicates a lack of respect for the welfare and property of others. The policy states that 10 years must have elapsed since the most recent conviction.

d) The Sub-committee considered the following matters specifically -

The Sub-committee concluded that the 2012 offences were violent offences. Since these offences took place less than 10 years ago, the need to refuse the application under paragraphs 6.6 and 16.1 of the Policy was presumed. The Policy's provisions were not

mandatory and it was possible to deviate from them if the facts of the case could be justified. In order to consider the possibility of deviating, the Sub-committee gave special consideration to paragraph 5.1 of the policy relating to the seriousness of the offence, its relevance, the date committed, the date of conviction, the applicant's age at the time of conviction, the sentence given, whether there was a pattern of offending, as well as any other relevant factors.

It was considered that the 2012 offences had stemmed from domestic incidents with the applicant's former partner. It was highlighted that the conviction happened approximately 6-7 years ago and that the Policy clearly stated that 10 years should have elapsed. The Sub-committee was of the opinion that deviating from the Policy would be premature, consequently, they were not satisfied that the applicant was currently a fit and proper person to hold a hackney vehicle and private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by letter to the applicant.

6. **APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE - Mr B**

a) The Chair welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in their use of licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr B for a hackney/private hire driver's licence. The Sub-committee was asked to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions, and the report of the DVLA.

The applicant was invited to expand on his application and provide information about the background to the offences and his personal circumstances. He gave a full explanation of the penalty points on his licence. His employer noted that the convictions in 1991 and 1998 had been given full consideration at a previous sub-committee, at which time the applicant's licence application had been approved. He reiterated that the applicant was a good driver and he praised his work.

The applicant and his employer withdrew from the room while the Sub-committee members discussed the application.

b) **RESOLVED - that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.**

c) In reaching its decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing

- verbal observations presented by the applicant's employer during the hearing
- the Licensing Department's report along with the DBS statement and the applicant's driving licence report provided by the DVLA.

The applicant was convicted by Mold Crown Court in April 1991 for causing injury to a person contrary to Section 47 of the Offences Against the Person Act 1861. He received a community order of 100 hours and was ordered to pay £100 in compensation and £124 in costs. In October 1998 he was convicted at Bangor Magistrates Court of stealing from his employer contrary to the the Theft Act 1968. He received a £350 fine and was ordered to pay £30 costs. In June 2015, Gwynedd Council claimed that he had operated as a hackney driver without a current licence (an offence that was contrary to section 47 of the Town Police Clauses Act 1847). It was also claimed that he did not have a reasonable excuse for not presenting his hackney carriage driver's licence when requested to do so by an authorised officer of the Council (an offence contrary to section 53 of the Local Government Act (Miscellaneous Provisions) 1976). The Licensing Unit made further enquiries and the applicant did not have a current driver's licence. Consequently, the Council submitted a prosecution against him at Caernarfon Magistrates Court. However, following concerns by the defence about the acceptability of the prosecution's evidence, the Council decided to withdraw its prosecution without going to trial.

In July 2016, the applicant received six penalty points for an MS90 offence (failure to provide information about the identity of a driver) - it was highlighted that these points would expire in July 2019.

In the Licensing Officer's report, it noted that officers from the Licensing Unit had suspected the applicant had continued to drive a taxi vehicle after the date his licence expired (6.3.19). Nevertheless, no details of the incident (time, location, and a description of what was seen) was not submitted.

- ch) Paragraph 2.2 of the Council's Policy was considered. This states that a person convicted of a serious offence need not be permanently barred from obtaining a licence, but should be expected to be free from conviction for an appropriate period as stated in the Policy, and to show evidence that he was a fit and proper person to hold a licence. The applicant has a responsibility to show that he/she is a fit and proper person. Paragraph 2.3 of the Policy states that 'other matters for consideration' include, among other things, fixed penalty notices, breach of licensing conditions, and charges.

Paragraph 4.5 of the Council policy was considered which stated that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allowed the Sub-committee to take into account all convictions, whether spent or otherwise under the 1974 Act.

Paragraph 6 of the Policy deals with offences of violence, and paragraph 6.5 states that an application for a licence will normally be refused if the applicant has a matter of common assault to be considered which occurred less than three years before the application date. The paragraph lists offences including, among others, assault that causes Actual Bodily Harm.

Paragraph 8 of the Policy deals with offences of dishonesty and paragraph 8.2 states that an application for a licence will normally be refused if the applicant has a matter to be considered (including warnings) for common assault that took place less than three years prior to the date of application. The paragraph lists amongst other matters offences relating to theft.

Consideration was given to paragraph 12.2 which listed serious traffic offences for the purposes of the Policy. Among these offences, MS90 - failure to provide information about the identity of a driver, is included. Paragraph 12.3 of the policy notes that an

application will usually be refused where the applicant has a conviction for a major traffic offence and has not been free of the conviction for at least 6 months

Paragraph 16.1 of the Council's policy deals with repeat offending. It was necessary to ensure that the convictions satisfied the individual policy guidelines, but that they together created a history of repeat offending that indicated a lack of respect for the welfare and property of others. The policy states that 10 years must elapse since the most recent conviction.

Paragraph 17.0 of the Policy relates to breaking the law, a bye-law or a licensing condition, and Paragraph 17.1 of the Policy states, if convicted of an offence, that an applicant would unlikely be granted a licence unless a period of 12 months had elapsed since the most recent conviction.

Condition 6 of the hackney and private hire car driver licence was considered, which notes that drivers are required to inform the Licensing Authority about any conviction under traffic legislation. If a breach was found, paragraph 17.1 of the Policy could apply, in which it is outlined that it is unlikely that an application would be approved unless a 12 month period had elapsed since the most recent breach.

d) The Sub-committee considered the following matters specifically -

It was considered that the 1991 conviction was in relation to a violent offence. As the conviction had taken place 28 years ago, the Sub-committee was satisfied that this conviction should not be a reason for refusing the application. The decision was the same for the 1998 conviction relating to dishonesty. This offence was also historical and in accordance with paragraph 8.2 of the policy there were no grounds to refuse the application.

After further discussion about the incident in June 2015, the Solicitor explained that the applicant had been found not guilty of these alleged offences by Caernarfon Magistrates Court. It was reiterated that the applicant, following the prosecution, had gone before the Sub-committee in March 2016 and that the Sub-committee, on that occasion, had approved the licence, ignoring the incident as he had been found not guilty. The incident was not considered for the purpose of this application either.

In considering the driving points accumulated in 2016, they were considered to be serious motoring offences. But, as there was no evidence that the applicant had been convicted as a result of these offences, the sub-committee was not satisfied that condition 6 had been breached. The points on the driving licence had accumulated over two years ago. Therefore, paragraph 12.3 should not be considered grounds for refusing the application.

In considering the licensing officers' suspicion that the applicant had driven a taxi without a licence, the solicitor advised that a general suspicion was not sufficient under the policy - evidence of an individual incident had to be presented where breach of a specific legislation had been identified. Consequently, the incident was disregarded.

Although each conviction had been considered independently, the sub-committee had to consider them collectively, under paragraph 16.1. The Sub-committee concluded that, collectively, the 1991 and 1998 convictions did not show a history of repeat offending that indicated a lack of respect for the welfare and property of others. However, since the most recent conviction had occurred over 10 years ago, paragraph 16.1 would not be relevant.

Under the circumstances, the Sub-committee was satisfied that the applicant was a fit and proper person to hold a hackney vehicle/private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by a letter sent to the applicant and that the Licensing Unit would be in contact to confirm the licence documentation.

The meeting commenced at 10:45am and concluded at 12:30pm.

GENERAL LICENSING SUB-COMMITTEE 12.04.2019

Present: Councillor Elfed Williams (Chair), Councillors Dafydd Owen and Jason Wayne Parry

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

1. APOLOGIES

None to note

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 A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE – Mr A

The Chair welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in their use of licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr A for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions.

The applicant was invited to expand on his application and provide information about the background of the offences and his personal circumstances. He noted that the offences referred to one incident when he was young and foolish, and that he had received a

significant fine for his folly. He added that he worked as a driver for a local company, and that the company had offered him a job as a hackney / private hire driver should his application be approved.

The applicant withdrew from the room while Sub-committee members discussed the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching its decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing
- the Licensing Department's report along with the DBS statement and the applicant's driving licence report provided by the DVLA.

Specific consideration was given to the following matters:

The applicant received a conviction in November 2010 from Caernarfon Magistrates' Court for a series of offences. The applicant was charged with aggravated vehicle-taking, causing damage to property contrary to section 12A of the Theft Act 1968. He was fined £85, ordered to pay costs of £85 and £1,400 in compensation, and was banned from driving for 12 months. On one occasion he was charged with driving a vehicle without insurance contrary to section 143(2) of the Road Traffic Act 1988, when he received a fine of £85 and a driving licence endorsement. He was also charged with driving contrary driving licence conditions, contrary to the Road Traffic Act 1988 S87(i), when he received a fine of £15 and a further driving licence endorsement.

The applicant received 3 penalty points for breaking the statutory speed limit on a public road in June 2016.

Paragraph 2.2 of the Council's Policy was considered, in which it was stated that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of conviction for an appropriate period as stated in the Policy, and to show evidence that he/she was a fit and proper person to hold a licence. The applicant had a responsibility to show that he/she was a fit and proper person. Paragraph 2.3 of the Policy confirmed that cautions were among the 'other matters for consideration'.

Paragraph 4.5 of the Council policy was considered, in which it was stated that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allowed the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise under the 1974 Act.

Consideration was given to paragraph 12.2 which listed serious traffic offences for the purposes of the Policy. Amongst the offences were IN10 (use of a vehicle uninsured against third party risks), LC20 (driving contrary to driving licence conditions) and UT50 (aggravated vehicle-taking). It was noted in paragraph 12.4 that an applicant with more than one major traffic offence within the last 5 years would normally be refused, and that no further application should be considered until a period of at least 3 years free from such convictions had elapsed.

Paragraphs 12.6 to 12.11 were considered, which discussed driving bans. It was noted in paragraph 12.10 that an application would normally be refused where the applicant had a conviction resulting in a period of disqualification of 12 months or more, unless a period of 18 months had elapsed from the end of the disqualification period.

Paragraph 13.1 was considered, in which 'minor traffic offences' were defined as offences that incurred between 1 and 3 penalty points. Paragraph 13.2 stated that one conviction for a minor driving offence or another matter to be considered was unlikely to lead to an application being refused.

The Sub-committee concluded that the November 2010 offences were major traffic offences. However, as these offences had occurred over 5 years ago, paragraph 12.4 was irrelevant and the sub-committee was therefore satisfied that they were not a reason for refusing the application. Given that one of the offences had led to a driving ban, it was highlighted that the licence had been restored in November 2011. Consequently, paragraph 12.10 was deemed irrelevant as a period of 18 months had elapsed. In addition, the speeding incident from 2016 was considered a minor traffic offence; and when considering paragraph 13.2 of the Policy, the Sub-committee was not of the opinion that this offence should create grounds to refuse the application.

Under the circumstances, the Sub-committee was satisfied that the applicant was a fit and proper person to hold a hackney vehicle/private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by a letter sent to the applicant and that the Licensing Unit would be in contact to confirm the licence documentation.

The meeting commenced at 10.00am and concluded at 10.30am

GENERAL LICENSING SUB-COMMITTEE 20.03.2019

Present: Councillor Peter Read (Chair), Councillors Steve Collings and Edgar Wyn Owen

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

1. APOLOGIES

None to note

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 A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE – Mr A

The Chair welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in their use of licensed vehicles.

The Licensing Officer presented a written report on an application received from Mr A for the renewal of a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, and the guidelines on relevant criminal offences and convictions.

The applicant's representative was invited to expand on the application and provide information about the background of the offence and the applicant's personal circumstances.

The applicant withdrew from the room while Sub-committee members discussed the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching their decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing
- the comments of his representative / prospective employer
- the Licensing Department's report along with the DBS statement

Specific consideration was given to the following matters

The applicant received a caution from North Wales Police in December 2012 on one charge of being in possession of extreme pornographic images, depicting sexual intercourse or oral sex between a person and an animal; an offence that is contrary to section 63(1)(7)(D) of the Criminal Justice and Immigration Act 2008. It was reported that the applicant had no other convictions or cautions.

Paragraph 2.2 of the Council's Policy was considered, in which it was stated that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of conviction for an appropriate period as stated in the Policy, and to show evidence that he/she is a fit and proper person to hold a licence. The applicant had a responsibility to show that he/she was a fit and proper person. Paragraph 2.3 of the Policy confirmed that cautions were among the 'other matters for consideration'.

It was highlighted that part 7 of the Policy addressed sexual offences and indecency. In paragraph 7.1, it was noted that a strict stance was to be taken with applicants who had convictions for sexual offences or other related matters as licensed drivers would often transport passengers who were travelling alone and were vulnerable. It was noted that an application would usually be refused if the applicant had a conviction or a matter for consideration in relation to the most serious sexual offences. In relation to other sexual offences, it was also noted that applicants would be expected to show a substantial period free of conviction or any other matter for consideration before an application would be approved. However, despite the fact that paragraph 7.1 did not define the most serious sexual offences, paragraph 7.2 listed the most serious offences which included, amongst others, being in possession of inappropriate photographs and child pornography; and it was recommended that an application should be refused if there was a conviction or other matters to be considered.

The Sub-committee concluded that the caution given in 2012 involved the offence of being in possession of inappropriate photographs, and was therefore considered as a serious sexual offence along with the presupposition in favour of application refusal under paragraph 7.2.

It was reported that the Sub-committee was aware that the Policy's provisions were not mandatory, and that it was possible to deviate from the recommendations should the facts presented within the application justify this; and that special consideration had been given to paragraph 5.1 of the policy relating to the seriousness of the offence, its relevance, the date committed, the date of conviction, the applicant's age at the time of conviction, the sentence given, whether a pattern of criminal behaviour was seen, as well as any other relevant factors.

Main observations arising from the discussion:

- That the offence, although in essence a serious one, had led to a caution rather than a conviction.
- That the images in the applicant's possession were there by accident, on computers bought second-hand and on a file sharing system. Despite being unaware of how the images came to be in his possession, he took responsibility for them.
- He was unaware of the images' existence until the Police brought the matter to his attention.
- Single incident. The applicant had no other offending record prior to nor following the incident.
- The applicant had held shotgun and firearms certificates for over 30 years, with these certificates having been renewed in 2017. Although the Sub-committee was unaware of the basis of the Police's decision to permit these licenses, the solicitor noted that the Police had broad powers when coming to a decision on licences of this kind. Although 'fit and proper' evidence was irrelevant with regard to gun licensing, it was somewhat unlikely that the Police would have approved their renewal were they not of the opinion that the applicant was fully fit and proper to be in possession of a gun.

Having considered all matters, the Sub-committee was of the opinion that deviation from the recommendation within the Policy could be justified in this case. Under the circumstances, the Sub-committee was satisfied that the applicant was a fit and proper person to hold a hackney vehicle/private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by a letter sent to the applicant and that the Licensing Unit would be in contact to confirm the licence documentation.

6. APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE - Mr B

The Chair welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application with the aim of protecting the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- The public are safeguarded from dishonest persons
- Children and young people are protected
- Vulnerable persons are protected
- The public have confidence in their use of licensed vehicles.

The applicant and his prospective employer were invited to expand on the application and offer an explanation on the offences. As the applicant did not now have the right to benefits nor pension credit, he was in need of employment. The prospective employer confirmed that he had a 16-hour post for the applicant and that he trusted him to complete the work, having known him for over 50 years.

The applicant and his representative withdrew from the room while the Sub-committee members discussed the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching their decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing
- the comments of his prospective employer
- the Licensing Department's report along with the DBS statement

Specific consideration was given to the following matters.

The applicant received a conviction from North West Wales Magistrates' Court (November 2017) for a charge of fraud as he had not reported a change in circumstances which would have affected his right to benefits payments (February 2014). The offence was contrary to section 111A(1A) of the Social Security Administration Act 1992, and the applicant was fined £180.00 and ordered to pay costs of £85.00 and a victim's surcharge of £30.00. It was highlighted that he had no further convictions nor cautions

Paragraph 2.2 of the Council's Policy was considered, in which it was stated that a person with a conviction for a serious offence need not be automatically barred from obtaining a licence, but would normally be expected to remain free of conviction for an appropriate period as stated in the Policy, and to show evidence that he/she was a fit and proper person to hold a licence. The applicant had a responsibility to show that he/she was a fit and proper person.

Paragraph 4.5 of the Council policy was considered which stated that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allowed the Sub-committee to take into account all convictions recorded against an applicant, whether spent or otherwise under the 1974 Act.

Paragraph 8.0 of the Policy, which addressed fraudulent offences, was considered. Paragraph 8.2 noted that an application would normally be refused or an existing licence suspended or revoked, if there was a conviction against the applicant/licence holder for a listed offence, and that the conviction was received less than three years prior to the date of application. It was noted that the list of offences included, amongst others, benefit fraud.

Main observations arising from the discussion:

- The applicant had only one conviction
- The benefit fraud offence fell low on the spectrum of seriousness (due to the nature and sum of the penalty). The applicant confirmed his situation regarding failure to declare that his wife received payment from an elderly neighbour for assistance around the house. There was no evidence that the applicant had substantially gained financially as a result of committing the offence. The relatively low sentence received for the conviction (a fine, as opposed to imprisonment) confirmed the Sub-committee's opinion that the offence was not amongst the most serious cases of fraud.
- That there was a high level of trust toward the applicant within the community
- That his prospective employer was eager for him to join his company to work as a taxi driver.

Having considered all matters, the Sub-committee was of the opinion that deviation from the recommendation within the Policy could be justified in this case. Under the circumstances, the Sub-committee was satisfied that the applicant was a fit and proper person to hold a hackney vehicle/private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by a letter sent to the applicant and that the Licensing Unit would be in contact to confirm the licence documentation.

The meeting commenced at 10:15am and concluded at 11:45am.

GENERAL LICENSING SUB-COMMITTEE 20.03.2019

Present: Councillor Peter Read (Chairman), Councillors Steven Collings and Edgar Owen

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

1. **APOLOGIES**

None to note

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 A HACKNEY / PRIVATE HIRE DRIVER'S LICENCE- Mr A**

The Chairman welcomed everyone to the meeting. He highlighted that the decision would be made in accordance with Gwynedd Council's licensing policy. It was noted that the purpose of the policy was to set guidelines for the criteria when considering the applicant's application and the aim was to protect the public by ensuring that:

- The person is a fit and proper person
- The person does not pose a threat to the public
- That the public are safeguarded from dishonest persons
- The safeguarding of children and young people
- The safeguarding of vulnerable persons
- The public have confidence in their use of licensed vehicles.

The Licensing Officer presented the written report on an application received from Mr A for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the applicant's driving licence report provided by the DVLA.

The applicant was invited to expand on the application and provide information about the background of the offences and his personal circumstances. He explained each situation in detail in turn. His employer confirmed that he knew the applicant well and that he was a good driver and a conscientious and reliable individual.

The applicant and his employer withdrew from the room while the Sub-committee members discussed the application.

RESOLVED that the applicant was a fit and proper person to be issued with a hackney vehicle/private hire driver's licence from Gwynedd Council.

In reaching their decision, the Sub-committee considered the following:

- The requirements of the 'Gwynedd Council Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant during the hearing
- verbal observations presented by the applicant's employer during the hearing
- the applicant's driving licence report provided by the DVLA.

Specific consideration was given to the following matters

In May 2017, the applicant received three penalty points on his driving licence for breach of requirements regarding control of a vehicle, mobile phones, etc. (these points expire in May 2019). Six additional penalty points received in September 2017 for breach of requirements regarding control of a vehicle, mobile phones etc. (these points expire in September 2020) were also considered. In December 2017, the applicant received a further three penalty points for breaking the speed limit on a public road (these points expire in December 2020). The applicant had no further convictions, warnings or endorsements.

Consideration was given to paragraph 2.3 of the Council's Policy, where it is noted that 'other matters to be considered' may include 'fixed penalty notices or other penalty notices'.

Consideration was given to paragraph 12.2 that lists serious traffic offences for the purposes of the Policy.

Consideration was given to paragraph 13.1 which notes that other traffic offences not listed in the Policy would be treated as 'minor traffic offences'. The paragraph is also puzzling, as it refers to a 'minor traffic offence' as an offence incurring between 1 and 3 penalty points. Despite this, it is suggested that any offence attracting more than three penalty points and which is not included in paragraph 12.2, should be presented / considered as a 'minor traffic offence'.

Paragraph 13.3 states that more than one conviction for a minor driving offence or another matter to be considered could lead to an application being refused, especially if there are several convictions or other matters to be considered for the same offence.

As the applicant already had a hackney vehicle/private hire driver's licence, the sub-committee considered condition 6 of his current licence. The condition notes that drivers are required to inform the Licensing Authority about any conviction under traffic legislation. If a breach was found, paragraph 17.1 of the Policy could apply, in which it is outlined that it is unlikely that an application would be approved unless a 12 month period has elapsed since the most recent breach.

Main observations arising from the discussion:-

- The Sub-committee established that the driving endorsements, although concerning, did not reach the threshold for application refusal.

- The offences were not considered to be major traffic offences as they were not listed in paragraph 12.2 of the policy – they were considered to be minor traffic offences.
- The Sub-committee concluded that there was more than one matter to be considered relating to the same offence - those occurring in May 2016 and September 2017 - meaning that paragraph 13.3 should be considered. However, unlike the Policy's other provisions, paragraph 13.3 does not set a presupposition in favour of refusal. It instead advises that the application 'may' (rather than 'should') be refused. Due to a lack of guidance, the Sub-committee were not convinced that this matter presented a case for refusal.
- Following confirmation from the applicant that he had received a fixed penalty notice and points in relation to the endorsements (not a criminal conviction), the Sub-committee was not of the opinion that there had been a technical breach of condition 6 of the hackney and private hire vehicle driving licence. However, the Sub-committee was of the opinion that all matters should be reported as a matter of good practice, and it was recommended that the applicant should inform the Licensing Authority about any future endorsements.
- Under the circumstances, the Sub-committee was satisfied that the applicant was a fit and proper person to hold a hackney vehicle/private hire driver's licence.

The Solicitor reported that the decision would be confirmed formally by a letter sent to the applicant and that the Licensing Unit would be in contact to confirm the licence documentation.

The meeting commenced at 1:35pm and concluded at 14:05pm