
GENERAL LICENSING SUB COMMITTEE 21/11/19

Present: Councillor Elfed Williams (Chair), Councillors Annwen Hughes and John Brynmor Hughes

Officers: Geraint Brython Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager) and Lowri H 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 12A 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 LICENCE – MR A

a) The Chair 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 individual 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. It was highlighted that an application from Mr A to renew his hackney / private hire driver's licence had been refused by the Sub-committee on 21.11.18. Mr A noted that the incident had taken place on his stag night and that his behaviour was out of character. He regretted what he had done and explained that he had apologised to the shop owner for his behaviour the following morning. He was not aware that the receiving of a caution was considered a conviction and that it would appear on his DBS record. He expressed that he was now working and had gained a first responder qualification – he had submitted a personal statement, testimonials and references to support his application.

His prospective employer (should the application be approved) had no additional comment to make.

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

b) **It was 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 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations presented by the applicant and his representative during the hearing
- the Licensing Department's report along with the DBS statement
- the applicant's personal statement, testimonials / references

Particular consideration was given to the following matters.

The applicant had received convictions for a series of offences (January 2010). The first conviction was for failing to surrender to custody at the allocated time, contrary to the requirements of the Bail Act 1976. He was fined £100.00 and ordered to pay £85 in costs. The second conviction was for being drunk and disorderly under Section 91 of the Criminal Justice Act 1967 (January 2010) where he was fined £50. The applicant received a conviction from Wolverhampton Magistrates' Court (February 2010) for damaging a property contrary to section 1 of the Criminal Damage Act 1971. He was fined £65 and ordered to pay costs of £85. In May 2017, the applicant received a caution from North Wales Police for the use of threatening and insulting language/behaviour, or disorderly behaviour intending to cause alarm / distress, contrary to the Public Order Act 1986.

Paragraph 2.2 of the Council's Policy was considered, which states 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 any 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 has a responsibility to prove that he is a fit and proper person.

Paragraph 2.3 of the Policy confirms that "other matters to be considered" do include cautions.

Paragraph 4.5 was considered which states that the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2002 allows 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 addresses violent offences. Paragraph 6.1 states that, since licensed drivers come into close contact regularly with the public, the sub-committee shall take a firm stance towards those who have offences involving violence. Paragraph 6.5 of the Policy states that an application for a licence will usually be refused if the applicant has a matter to be considered (including cautions) for common assault and/or an offence under S4 of the Public Order Act 1986 which happened less than three years before the date of application. Paragraph 6.6 also states that an application will normally be refused if an applicant has more than one conviction for an offence of a violent nature, or other matter to be considered in connection with that, within the last 10 years.

The Sub-committee also gave consideration to paragraph 16.1 of the Council's policy that deals with repeat offending. Firstly, it was necessary to ensure that the convictions satisfied the policy guidelines individually, but that they together created a history of repeat offending which indicated a lack of respect for the welfare and property of others. Under the Policy it is a requirement that 10 years have elapsed since the most recent conviction.

The Sub-committee determined that the offences in this application were identical to those that had been considered by the Sub-committee of 21 November 2018 in connection with a previous application made by the applicant in 2018 for a hackney vehicle / private hire driver's licence. Although the present Sub-committee was not bound fully by the findings of the 2018 Sub-committee, they were duly addressed by it.

The 2018 Sub-committee had found that there was no specific provision in the Policy that applied to offences of failing to surrender to bail and being drunk and disorderly. Although these convictions were considered to be serious, in light of their historical nature and in the absence of any specific Policy recommending refusal, these convictions, individually, were not grounds for refusing the application. The Sub-committee on the current applicant were in agreement.

In considering the caution issued in 2017, the Sub-committee of 2018 had found that the caution related to violent offending. The 2019 Sub-committee came to the same conclusion.

Combined, the Sub-committee of 2018 considered that the convictions of 2010 and the caution of 2017 constituted more than one conviction or matter to be considered within the past 10 years for an offence of a violent nature, and therefore, under paragraph 6.6 of the Policy they were grounds for refusing the application. In addition, the Sub-committee was of the opinion that repeat offending which indicated a lack of respect for the welfare or property of others, was relevant to paragraph 16.1 of the policy.

A year later, it was considered that the 2010 conviction and the caution in 2017 still constituted 'more than one conviction or matter to be considered within the past 10 years after making an application', and that this would remain the case

until the expiry of the 10 year period – namely 7 February 2020 in this case. Re-offending with disregard to others or their property also still remained within the 10 year timeframe, therefore in the circumstances, the present Sub-committee was satisfied that the presumptions in favour of refusal under paragraphs 6.6 and 16.1 of the Policy applied. Even if the 2010 conviction was disregarded, the 2017 caution was sufficient grounds on its own to refuse the application under paragraph 6.5 of the Policy until the three year period had expired – in this instance, 29 May 2020.

The Solicitor highlighted that the Policy's provisions were not mandatory and that the Sub-committee could deviate from the recommendations if the facts of the case justified that. Particular consideration was given to paragraph 3.5 of the report which addressed the seriousness of the offences, their relevance, the date they were committed, the date of conviction and the applicant's age at the time of conviction, the sentence given by the Court and whether the offences related to a pattern of offending, as well as any other relevant factors.

Having considered the background of the incident that had happened in 2017, the 2018 Sub-committee had not been satisfied, despite the applicant admitting that he was guilty, that the reasons for his behaviour were enough to excuse the offence. It was noted that the applicant had a hackney driver's licence at the time of being cautioned by North Wales Police, and that this information had not been shared with the Licensing Department. It seems the information had been shared when completing a licence renewal application. Despite the applicant's explanation that he had not been aware of the need to disclose the information about the caution, the Sub-committee did not accept this since the licence application form clearly stated the need to disclose information about offences and cautions. As a driver, he should have been aware of this need.

The Sub-committee considered that the applicant had not made an honest statement to his employer and that this in itself evidenced that we has not a fit and proper person.

However, having received a personal statement, testimonials and a reference which, amongst other matters, addressed the incident that had led to the caution in 2017, the Sub-committee accepted that the applicant was on good terms with the shop owner and that he had apologised for his behaviour. Although it did not excuse the crime, it provided an important context for the Sub-committee to consider in respect of deviating from refusal of the application. Following the decision by the 2018 Sub-committee that the applicant was not a fit and proper person as he had not disclosed details of his offences to his employer, the applicant had submitted additional character references to support his re-application. Consideration was also given to the applicant's work along with his responsibilities as a first responder – two jobs that demanded a high level of trust.

The Sub-committee accepted that the applicant had now made amends for his dishonesty in failing to disclose his offences to the Licensing Department and former employer, since the applicant had learned from his mistakes and had changed direction since the decision in 2018 by accepting responsibilities and gaining trust in his jobs.

The Chair of the Sub-committee noted that the application was a difficult one to determine, however, after careful consideration of the evidence and information, the Sub-committee was willing to deviate from the Policy and it therefore decided that the applicant was 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 LICENCE – MR B

a) The Chair 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 B for a hackney/private hire driver's licence. The Sub-committee was requested to consider the application in accordance with the DBS record, the Driver and Vehicle Licensing Agency statement, 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 offences and the applicant's personal circumstances. The representative explained that Mr B had changed address and that his parent had not forwarded letters to him. Consequently, he had failed to respond to a penalty notice that had been issued for not paying a toll.

The applicant and his representative 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 had considered the following:

- the requirements of 'Gwynedd Council's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- the applicant's application form
- verbal observations given by the applicant's representative during the hearing
- the Licensing Department's report, the DBS statement and the Driver and Vehicle Licensing Agency statement

In October 2015 the applicant had received three penalty points for breaching the statutory speed limit on a public road. In October 2017 he had received six penalty points for failing to provide information relating to driver identity.

There were no further matters to be considered.

Paragraph 2.2 of the Council's Policy was considered, which states 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 any 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 has a responsibility to prove that he is a fit and proper person. Paragraph 2.3 of the Policy confirms that "other matters to be considered" do include cautions.

Paragraph 12.2 lists serious traffic offences for the purposes of the Policy. Among the offences are MS90 (failing to provide driver identity information) where paragraph 12.3 states that an application will be refused if there is a conviction against the applicant and he/she has not been free of the conviction for at least 6 months.

Consideration was given to paragraph 13.1 which highlights that offences that receive between 1 and 3 penalty points are 'minor traffic offences'. Paragraph 13.2 states that a conviction or another matter to be considered for a minor traffic offence is unlikely to lead to refusal of an application.

The Sub-committee concluded that the 2015 conviction for speeding was a minor offence and the points had expired in October 2018, therefore the members decided that it was not grounds to refuse the application. The Sub-committee concluded that failing to provide identity information was a serious traffic offence. However, as this had happened over six months ago, paragraph 12.3 did not apply and the Sub-committee was satisfied that they were not grounds to refuse the application.

Having carefully considered the evidence and information, the Sub-committee was satisfied that the applicant was 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.

The meeting commenced at 10.30 am and concluded at 12.00 pm

CHAIRMAN