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## GENERAL LICENSING SUB-COMMITTEE 16.04.2019

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**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.