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## GENERAL LICENSING SUB-COMMITTEE 20.03.2019

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**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.