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## GENERAL LICENSING SUB-COMMITTEE 01.08.2019

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**Present:** Councillor Annwen Hughes (Chair), Councillors John Brynmor Hughes and Angela Russell

**Officers:** Geraint Brython Edwards (Solicitor), Gwenan M Roberts (Licensing Manager), and Lowri Haf Evans (Member Support Officer)

### 1. **APOLOGIES**

An apology was received from Councillor Peter Read.

It was noted that he had recently received surgery and he was sent best wishes for a speedy recovery.

### 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 Chair welcomed everyone to the meeting. She 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 highlighted that the 1988 conviction was one that had occurred when he was in his teens and he had not been in any sort of trouble since. He added that the 1989 conviction was not relevant to him and he presented a letter from the Disclosure and Barring Service (dated 26.9.19) confirming this. He also noted that an amended certificate would be sent to him.

The applicant withdrew from the room while members of the Sub-committee 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 'Gwynedd Council's 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

ch) The applicant was found guilty by Menai Bridge Magistrates' Court in September 1988 on two charges - one of assault causing bodily harm contrary to Section 47 of the Offences Against the Person Act 1861, and one charge of affray contrary to Section 3 of the Public Order Act 1986. He received a fine of £400.00 and an order to pay costs of £47.00.

According to the applicant's DBS statement he had a conviction (March 1989) for three charges of shoplifting, contrary to section 1 of the Theft Act 1968. However, he confirmed at the hearing that this record had been included in error and he presented a letter to the Sub-committee from the DBS confirming that the disclosure included an error.

d) Paragraph 2.2 of the Council's Policy was considered, this states that a person with a conviction for 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 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 addresses violent offences. Paragraph 6.1 states that licensed drivers have close regular contact with the public therefore the sub-committee should adopt a robust stance with those who have offences involving violence. Paragraph 6.2 states, that anyone who has been found guilty of violence-related offences is unlikely to receive a licence until they have been free from such a conviction(s) for at least three years. 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 for common assault that is less than three years prior to the date of application. The paragraph lists offences and common assault is included in the list.

Paragraph 8.0 of the Policy, which addresses dishonesty offences, was considered together with paragraph 8.1 that states that a serious view is taken of any conviction involving dishonesty. Paragraph 8.2 notes that an application would normally be refused where the applicant/licence holder has a conviction(s) for an offence listed, 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 burglary, amongst other offences.

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.

- dd) The Sub-committee determined that the 1988 offences were violent offences. However, as these offences had occurred over 30 years ago, beyond the period of 3 years, paragraphs 6.2 and 6.5 of the Policy were irrelevant, and there was no reason to refuse the application. In weighing up the 1989 conviction for the purposes of the application, it was noted that the letter received from the Disclosure and Barring Service (dated 26.7.19) did not note the error appropriately, and therefore the applicant's statement was accepted. However, as the offence had occurred over 30 years ago, this would not have led to refusal of the application, neither independently under paragraph 8.2, or collectively with the 1988 conviction under paragraph 16.1 as it was beyond the appropriate periods.

The Sub-committee was of the opinion 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 HACKNEY/PRIVATE HIRE DRIVER'S LICENCE - Ms B**

- a) The Chair welcomed everyone to the meeting. She 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 Manager submitted the written report on the application received from Ms B for a new 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 her application and provide information about the background of the offence and her personal circumstances. She highlighted that the offence had occurred as a result of 'being in the wrong place at the wrong time'. She noted that her family ran a taxi company and she had been offered work to assist the business over the weekends.

The applicant withdrew from the room while members of the Sub-committee 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 'Gwynedd Council's 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

ch) The applicant had received a caution from North Wales Police (June 2015) for an offence of Battery contrary to section 39 of the Criminal Justice Act 1988.

d) Paragraph 2.2 of the Council's Policy was considered, this states that a person with a conviction for 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 she was a fit and proper person to hold a licence. The applicant has a responsibility to show that she is a fit and proper person. Paragraph 2.3 of the Policy states that 'other matters for consideration' include cautions.

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 addresses violent offences. Paragraph 6.1 states that licensed drivers have close regular contact with the public therefore the sub-committee should adopt a robust stance with those who have offences involving violence. Paragraph 6.2 states that anyone who has been found guilty of violence-related offences is unlikely to receive a licence until he/she has been free from such conviction(s) for at least three years. 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 for common assault that is less than three years prior to the date of application. The paragraph lists offences and common assault is included in the list.

dd) The Sub-committee determined that the 2015 offence was a violent offence. However, as this had occurred over 4 years ago, beyond the period of 3 years, paragraphs 6.2 and 6.5 of the Policy were irrelevant, and there was no reason to refuse the application.

The Sub-committee was of the opinion 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.

## **7. APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S LICENCE – Mr C**

Also in attendance: Owain Williams (Public Protection Enforcement Officer - responsible officer for leading the prosecution in September 2016) and Alun Merfyn Roberts (Public Protection Enforcement Officer – Observer)

a) The Chair welcomed everyone to the meeting. She 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 the application received from Mr C 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 stated that he had been through a difficult time recently with a marriage break-up, his son had been in a serious accident and the death of one of his brothers. He noted that although he was not making any excuses he had let matters slip regarding the administration and running of his taxi business. He added that he was a good driver and he wished to return to work in north Wales. He argued that he should not be criticised for one mistake as he had been a faultless taxi driver.

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

b) **RESOLVED that the applicant was not 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 during the hearing
- verbal observations presented by the enforcement officer during the hearing
- the Licensing Department's report along with the DBS statement

ch) The applicant had received a conviction from Liverpool Youth Court (June 1979) for one charge of theft, contrary to section 1 of the Theft Act 1968. He received a conditional discharge for 12 months (conviction 1). In August 1984, the applicant was found guilty by Wirral Magistrates' Court for one charge of stealing from a vehicle contrary to the Theft Act 1968. He received a fine of £50.00 and an order to pay damages of £12.00 (conviction 2). In November 1986, the applicant was found guilty by Birkenhead Magistrates' Court on two counts of fraudulently claiming child benefit contrary to section 11 of the Child Benefit Act 1975. He received a fine of £60.00 and an order to pay costs of £30.00 and damages of £8.00 (conviction 3).

The applicant received a conviction in July 1991 by Dolgellau Magistrates' Court on three charges - one of obstructing the police, contrary to section 51 (3) Police Act 1964, and two charges of fraudently receiving property contrary to section 15 of the Theft Act 1968. For the first charge, he received a fine of £100.00 and ordered to pay £20.00 in costs. For the other two charges, he received two conditional discharges for 12 months and an order to pay damages of £195.00 (conviction 4).

In September 1991, the applicant was found guilty by Wirral Magistrates' Court for one charge of criminal damage contrary to Section 1 of the Criminal Damages Act 1971. He was ordered to pay damages of £212.13 (conviction 5). In November 1998, the applicant was found guilty by Ynys Môn Magistrate's Court of forging a document separate to a

prescription for a listed drug contrary to section 1 of the Forgery and Counterfeiting Act 1981. He received a fine of £40.00 and an order to pay costs of £35.00 (conviction 6).

In September 2000, the applicant was found guilty by Meirionnydd Magistrates' Court for one charge of drink driving, contrary to Section 5 of the Road Traffic Act 1988. He received a fine of £100.00, an order to pay costs of £35.00, and was banned from driving for 18 months (conviction 7).

The applicant was found guilty of three charges (April 2017) by Caernarfon Magistrates' Court in a prosecution made by Gwynedd Council (conviction 8) in relation to allowing an unlicensed vehicle to be driven without a current licence or valid insurance policy whilst transporting school children in accordance with the Transport Contract, contrary to section 46 of the Local Government (Miscellaneous Provisions) Act 1976. For these offences he received a fine of £200 and 6 penalty points on his licence. Following the incident several letters were sent to the applicant giving him an opportunity to explain the circumstances of the incident, however, it was found that he had moved away from the area. Under the provisions of section 44 of the Town Police Clauses Act 1847, it is required that the owner of a hackney vehicle informs the Council of a change of dwelling. He received a fine of £40 for this charge.

- d) Paragraph 2.2 of the Council's Policy was considered, this states that a person with a conviction for 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 is a fit and proper person. Paragraph 2.3 of the Policy states that 'other matters for consideration' include 'fixed penalty notices'. Paragraph 2.4 states that 'where an applicant has a conviction(s) or other matter(s) to be considered for a criminal offence, the council cannot review the merits of the conviction or other matter'.

Paragraph 4.5 of the Council policy was considered, which states 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 addresses violent offences. Paragraph 6.1 states that licensed drivers have close regular contact with the public therefore the sub-committee should adopt a robust stance with those who have offences involving violence. Paragraph 6.2 states that anyone who has been found guilty of violence-related offences is unlikely to receive a licence until he/she has been free from such conviction(s) for at least three years. 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 for common assault that is less than three years prior to the date of application. The paragraph lists offences and criminal damage and obstruction are included in the list. Paragraph 6.6 states that an application will normally be refused if an applicant has more than one conviction, or other matter, to be considered in the last 10 years for an offence of a violent nature.

Paragraph 8.0 of the Policy, which addresses dishonesty offences, was considered together with paragraph 8.1 that states that a serious view is taken of any conviction involving dishonesty. Paragraph 8.2 notes that an application would normally be refused where the applicant has a conviction(s) for an offence listed, and 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, forgery and burglary.

Paragraph 11.1 of the Council's policy deals with drink driving and states that a single conviction may not result in an application being refused provided that at least three years have elapsed since the ending of the disqualification.

Consideration was given to paragraph 12.2, which lists serious traffic offences for the purposes of the Policy. Amongst the offences included were 'using a vehicle uninsured against third party risks'. Paragraph 12.3 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. 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.

dd) The Sub-committee resolved that

- convictions 1, 2, 3, 4 (charges 2 and 3) and 6 dealt with offences of dishonesty. However, as the last offence had occurred in 1998, over 20 years ago (beyond the period of 3 years), paragraph 8.2 was irrelevant, and there was no reason to refuse the application. Nevertheless, there could be grounds to refuse the application collectively with other convictions in light of paragraph 16.1.
- that convictions 4 (charge 1) and 5 dealt with violence-related offences. However, as the last conviction occurred in 1991, over 27 years ago (beyond the period of 10 years), paragraph 6.6 of the Policy was irrelevant and there was no reason to refuse the application. Nevertheless, there could be grounds to refuse the application collectively with other convictions in light of paragraph 16.1.
- that conviction 7 involved drink-driving. As the disqualification had ended in 2002 at the latest, paragraph 11.1 of the Policy was irrelevant and there was no reason to refuse the application. Nevertheless, there could be grounds to refuse the application collectively with other convictions in light of paragraph 16.1.
- that conviction 8 (charge 2) concerned a serious traffic offence. The applicant argued that he was insured despite his guilty plea and he presented a letter from his insurers to support this. However, the applicant did not present evidence that he had taken measures to appeal or to overturn the conviction through the Court. In addition, paragraph 2.4 was considered which clearly states that the merits of the conviction cannot be reviewed. Nevertheless, as the conviction occurred over six months ago, paragraph 12.3 was irrelevant, although there could be grounds to refuse the application collectively with other convictions in light of paragraph 16.1.

In considering the convictions the Sub-committee was of the opinion that repeat offending indicated a lack of respect for the welfare or property of others. Consequently, paragraph 16.6 of the policy was relevant. The Solicitor highlighted that the Policy's provisions were not mandatory and it was possible to deviate from the recommendation if the facts of the case justified this. Special consideration was given to paragraph 4.2 of the report that included the seriousness of the offences, relevance, the date committed, the date of conviction and the applicant's age at the time of conviction, the sentence given by the Court and whether there was a pattern of offending, as well as any other relevant factors.

The applicant explained that he was going through a difficult personal time during the period that lead up to the 2017 conviction. Although the Sub-committee sympathised with the applicant, they had to give priority and protect public safety. Having fully considered the circumstances, the Sub-committee was not convinced that this was a case where they could justify deviating from the policy.

The Sub-committee was of the opinion that the applicant was not 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 10:00am and concluded at 12:45pm.