
GENERAL LICENSING SUB-COMMITTEE 08-11-2022

Present:

Councillors: Councillor Annwen Hughes (Chair)
Councillors Gareth T Jones and Edgar Owen

Officers: Sion Huws (Senior Solicitor), Gwenan Mai Roberts (Licensing Manager) and Lowri Haf Evans (Democracy Services Officer)

1. APOLOGIES

None to note

2. DECLARATION OF PERSONAL INTEREST

3. URGENT ITEMS

None to note

4. EXCLUSION OF PRESS AND PUBLIC

It was **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 DRIVER'S LICENCE – Mr 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
- The safeguarding of vulnerable persons
- 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 carriage/private hire driver's licence. The Sub-committee was requested to consider

the application in accordance with the DBS record, the guidelines on criminal offences and relevant convictions, as well as the medical certificate, the applicant's personal statement and references. The Licensing Authority had recommended that the Sub-committee should refuse the application.

In response to the presentation of the Licensing Manager, the applicant's representative asked the Licensing Manager to confirm that the passenger in the 2019 case had not come to any harm or made any formal complaint to the Police about the driver's behaviour. In response, the Licensing Manager noted that the evidence had been challenged at the Magistrate' Court and although there had been no conviction, the Judge had determined that the evidence was credible.

The applicant's representative suggested that the passenger's impressions were very different to those of the driver in the 2019 incident. In response, the Licensing Manager, although confirming that there had been no further action by the Police, noted that a recording of the situation on the evening had been submitted as evidence and that 'general behaviour' was a consideration, although there had been no conviction.

In response, the applicant's representative noted that a caution by the Police was not a conviction but, in response, the Licensing Manager noted that evidence of a caution was sufficiently strong in this case.

The applicant was invited to expand on his application and provide information about the background of the caution on his licence and his personal circumstances. A mixture of 37 references had been submitted by friends, colleagues, neighbours and service users. He noted that he regretted the incidents in 2018 and 2019 and that he acknowledged that he had behaved appallingly. At the time, he was under strain although he accepted that this was no excuse for his behaviour. He appreciated that drivers had to be reliable and that the sub-committee played an important part in ensuring this.

He shared examples of the work and community responsibilities he had undertaken since the incidents, which included attending a course on ensuring public safety. He stated his wish to put the past behind him and focus on moving forward by prioritising his business and his family. He thanked his staff for their support in carrying on the business through a difficult period. He referred to his work as a licensed travel supervisor for the county's Education Department. He noted that the department had approved a travel supervisor licence for him and that no complaints had been received about his work. He referred to a specific case as an example of the responsibilities required to be a travel supervisor.

In response to a question regarding how he would set an example to his drivers as an employer and manage his behaviour, he noted that he had made every effort to improve himself since the incidents in 2018 and 2019, especially as people paid for his service that they expected better.

Having summarised his application, the applicant's representative proposed to the sub-committee, should the application be approved, that a 12 month licence was approved so that the applicant could prove himself and build a relationship with the Licensing Unit.

In response, should the applicant be granted a licence, the Licensing Manager noted that the expected standard was the same in all cases. She reiterated that there was flexibility in the Act to consider a period that was less than 3 years.

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

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

- The requirements of 'Cyngor Gwynedd's Licensing Policy for Hackney Carriages and Private Hire Vehicles'
- The applicant's application form
- The Licensing Department's report, the DBS statement and the DVLA's report
- The applicant's verbal representations
- The applicant's medical form
- Personal Statement from the applicant
- The applicant's references

Specific consideration was given to the following matters:

Background

In May 2018, the hackney/private hire driver's licence was revoked with immediate action in order to safeguard the public, in accordance with the provision of section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976 following a violent incident. The applicant was issued a caution by the Police for the common assault, which was contrary to section 39 of the Criminal Justice Act 1988

In September 2018, a new application for a hackney/private hire driver's licence was received from the applicant. The application was referred to the Sub-committee for a decision with a recommendation to refuse in accordance with the Council's Suitability Criteria for Drivers and Operators policy. The Sub-committee resolved to approve the application.

In March 2019, the applicant's taxi driver's licence was revoked in order to safeguard the public, in accordance with the provision of section 61(1) (b) of the Local Government (Miscellaneous Provisions) Act 1976, following an alleged physical assault on a customer. He was not convicted for the incident.

In July 2019, the applicant brought an appeal under section 52 of the Local Government (Miscellaneous Provisions) Act 1976 against the decision of the Licensing Service Officer to revoke his licence in March 2019. At Caernarfon Magistrates' Court, he lost his appeal case and the judge confirmed that the evidence used by the Council to reach a decision to revoke the taxi driver's licence was the right decision.

In January 2020, another application was received for a hackney/private hire driver's licence from the applicant. The application was referred to the Sub-committee in February 2020 and it was resolved to refuse the application. Following the decision, the applicant brought an appeal under section 52 of the Local Government (Miscellaneous Provisions) Act 1976 against the decision. At an interim hearing in September 2020, the Magistrates' Court decided that the conclusions of the first appeal stood as evidence and that the applicant may not try to re-challenge the facts surrounding the assaults, as that would amount to abuse of the court process. In December 2020, the applicant applied to withdraw his appeal and the Judge accepted his application.

RELEVANT CLAUSES OF THE POLICY

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 he will be expected to have been free of any conviction for an appropriate period as stated in the Policy, and to show evidence that he is a fit and proper person to hold a licence. The onus was on the applicant to prove that he was a fit and proper person. Paragraph 2.4 states that when an applicant has a conviction(s) or there are other related matter(s) to be considered in connection with that, the Council cannot review the merits of the conviction or other matter.

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 6.0 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 adopt a firm stance towards those who have offences involving violence. Paragraph 6.2 notes that anyone found guilty of an offence relating to violence is unlikely to be granted a licence until they have been free from such a conviction for a minimum of three years. However, when considering the range of offences relating to violence, the nature of the offence must be considered.

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 the application.

Paragraph 6.6 of the Policy states that an application will normally be refused if an applicant has more than one conviction for an offence of a violent nature within the last ten years.

CONCLUSIONS

In accordance with policy provisions, the Sub-committee concluded that the required three years had elapsed since the 2018 conviction and the 2019 incident. In considering the matter of re-offending and finding that both incidents were of the same nature, the provisions of para.6.6 of the policy were relevant. Therefore, consideration had to be given to approving the licence even though ten years had not elapsed since the previous conviction / relevant matter.

An explanation was received by the applicant and his reasons for his behaviour. The Sub-committee was pleased to hear him admitting that he was at fault and acknowledging that his behaviour was totally unacceptable; however, whatever the personal circumstances, they were no excuse for the assault in 2018. Similarly, the Sub-committee was pleased that the applicant admitted that he should have responded differently to the incident in 2019.

Consideration was given to the applicant's work as a licensed passenger supervisor, who was responsible for assisting taxi drivers who carried vulnerable passengers/children on Cyngor Gwynedd school contracts. It was also considered that he had been granted Security Industry Authority Licence and, in order to meet licence requirements, he had undertaken a full week of courses, which included people management, first aid, how to diffuse potential aggressive situations and public protection.

Consideration was given to examples of difficult situations the applicant had dealt with and that no further complaints had been received regarding his behaviour. The proposal of issuing a licence for an initial one-year period instead of the usual three, was also considered.

The Head of Environment Department recommended to refuse the application. Although there had not been any further violent incidents since 2019, officers of the Licensing Unit were not convinced that the applicant had learnt from the incidents. It was noted that only five months had elapsed since approving the licence in October 2018 after his licence was revoked by the authority earlier that year - these facts supported officers' opinion and suggested a tendency to reoffend.

Having carefully weighed up all the presentations and evidence, the Sub-committee resolved that they accepted that the applicant acknowledged that his behaviour had been totally unacceptable and that he was genuinely full of regret. Evidence submitted of positive actions taken by the applicant, such as the Security Industry course, supported his application.

Having received a majority vote, the Sub-committee resolved to approve the application and that the applicant was a fit and proper person to hold a hackney and private hire vehicle driver's licence. However, the proposal to approve the licence for one-year only was accepted, emphasising that the expected standard of behaviour was exactly the same as that of a three-year 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 12:05pm