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## GENERAL LICENSING SUB-COMMITTEE 18.12.2019

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**Present:** Councillor Elfed Williams (Chair), Councillors Edgar Owen and Dafydd Owen

**Officers:** Geraint Brython Edwards (Solicitor), Gwenan Mai Roberts (Licensing Manager) and Lowri H Evans (DEmocratic Services Officer)

### 1. APOLOGIES

Apologies were received from both applicants.

It was noted that both applicants had noted that they did not want the hearing to be deferred due to their absence.

### 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 DRIVER'S 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 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 Licensing Authority recommended that the Sub-committee should approve the application.

The applicant was not present to expand on his 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
- the Licensing Department's report along with the DBS statement

ch) Specific consideration was given to the following matters.

The applicant received a conviction from Caernarfon and Gwyrfai Magistrates' Court (August 2000) for being drunk and disorderly contrary to section 91(1) of the Criminal Justice Act 1967. He was fined £50 and ordered to pay £30 costs. In January 2007, the applicant received a conviction from Gwynedd Magistrates' Court for unruly behaviour or using threatening, aggressive/insulting language likely to cause harassment, alarm or distress contrary to section 5(1) (A) of the Public Order Act 1986. He was given a conditional discharge of 12 months together with an order to pay costs of £75.00.

d) 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 the individual 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 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.

dd) The Sub-committee came to the conclusion that the convictions in 2000 and 2007 were violence-related, however, as the last offence had occurred over 12 years ago (which is beyond the period of 3 years), paragraphs 6.5 and 6.6 were irrelevant and, therefore, there was no reason to refuse the application.

e) 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.

## 6. APPLICATION FOR A HACKNEY/PRIVATE HIRE DRIVER'S 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 Manager submitted the written report on the application received from Ms 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 Licensing Authority recommended that the Sub-committee should refuse the application.

The applicant was not present to expand on his 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 their 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
- The Licensing Department's report, the DBS statement and the Driver and Vehicle Licensing Agency statement
- Institute of Licensing Guidance
- Video clip of January 2019 incident

ch) Specific consideration was given to the following matters.

In May 1982, the applicant received a conviction for a series of offences. The first offence was for theft from a vehicle contrary to the Theft Act 1968. The second was for burglary, the third for criminal damage contrary to section 1 of the Criminal Damages Act 1971, and the fourth was also for theft from a vehicle. For every individual charge he received a community service order of 150 hours, an order to make a contribution towards legal aid of £75.00 and an order to pay costs of £75.00.

In November 1983, the applicant received a conviction from Pwllheli Magistrates' Court for one charge of attempted theft from a vehicle, contrary to section 1 of the Theft Act 1968. He received a fine of £60.00 and ordered to pay costs of £3.00. In May 1985, he received a conviction from Pwllheli Magistrates' Court for a series of charges - offences relating to theft, contrary to Section 1, Theft Act 1968 and of attempted burglary contrary to section 9(1)(B) Theft Act 1968. He was given a youth custody sentence for 6 months and an order to pay damages of £450.00.

In October 1988, he was convicted by Caernarfon Crown Court on a charge of assault that led to bodily harm contrary to section 47 of the Offences Against the Person Act 1861. He received a 9 month custodial sentence which was suspended for 6 months.

Following an incident in January 2019, he was convicted at North West Wales' Magistrates Court (September 2019) of dangerous interference with traffic equipment contrary to section 22A(1)(c) of the Road Traffic Act 1988. He received a fine of £250.00 and was ordered to pay costs of £775.00 and a victim's surcharge of £30.00.

It was highlighted that North Wales Police had disclosed additional information in relation to the January 2019 incident, that the applicant when driving a taxi and transporting passengers had moved road closure barriers. The Licensing Officer confirmed that a video of the incident was circulated on a social media website (claiming to have been taken from the mobile phone of one of the passengers in the taxi) of the applicant moving the barriers. When the video came to the attention of the Licensing Authority, the evidence was submitted to the Police. It was added that an Enforcement Officer from the Licensing Authority had confirmed in a statement that he identified the applicant as the individual in the video. The video was shown to the Sub-committee.

It was noted in the report that the applicant's taxi driving licence had expired a few days after the applicant had been convicted in September 2019.

- d) 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. However, a person would normally be expected to remain free of any conviction for an appropriate period as stated in the Policy, and to show evidence that the individual 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 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 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 6.5 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.

Paragraph 8.0 of the Policy, which addressed dishonesty offences, was considered together with paragraph 8.1 that stated that a serious view was taken of any conviction involving dishonesty. Paragraph 8.2 noted that an application would normally be refused where the applicant had 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 and theft, amongst other offences.

Section 12 of the Policy concerns motoring convictions, however, the list of motoring offences do not include the offence of dangerous interference with traffic equipment.

Paragraph 14.1 of the Policy states that if the individual is the subject of an outstanding charge or summons their application can continue to be processed, but in the interests of

public safety the matter will be considered and may be deferred for determination until proceedings are concluded.

Section 17 of the Policy addresses situations of breaching an Act, a Byelaw or a Licence condition. It is noted that an applicant who has a conviction or other matters to be considered for a breach of legislation, byelaw or licence condition is unlikely to be granted a licence unless a period of at least 12 months has elapsed since the most recent breach.

In addition to the legislation and the Policy, the Sub-committee was requested to consider the Institute of Licensing's guidance in relation to the suitability and propriety of applicants for a taxi driving licence. Attention was drawn specifically to paragraph 4.15 of the guidance that recommends,

“Any offence committed, or any unacceptable behaviour reported whilst driving a hackney carriage or private hire vehicle...will be viewed as aggravating features, and the fact that any other offences were not connected with the hackney carriage and private hire trades will not be seen as mitigating factors.”

And paragraph 4.26 that states,

“A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.”

- dd) The Sub-committee determined that the 1982 and 1988 offences were violent offences. However, as the last conviction had occurred over 31 years ago (beyond the period of 3 years), paragraphs 6.5 and 6.6 were irrelevant, and therefore were no basis to refuse the application. The Sub-committee came to the conclusion that the convictions in 1982, 1983 and 1985 were offences of dishonesty, however, as the last conviction had occurred over 34 years ago (which is beyond the period of 3 years), paragraph 8.2 was irrelevant and, therefore, there was no basis to refuse the application.

In considering the September 2019 conviction, the Sub-committee came to the conclusion that it did not fall within the contents of part 12 of the Policy (motoring offences) and therefore the recommendation in favour of disqualification was irrelevant. However, it was considered that the incident did involve the breach of legislation and fell within the contents of part 17 of the Policy. Since this incident had occurred less than 12 months ago paragraph 17.1 of the policy was relevant and recommended that the application be refused.

Although they were aware that the Policy provisions were not mandatory and it was possible to deviate from it if the facts of the case justified this, the Sub-committee considered paragraph 5.1 of the Policy. In this case the facts did not justify deviating from the recommendation to refuse the application.

It was considered that a lack of relevant provision within the Policy did not mean that the application could not be refused. It was explained that if the Sub-committee was of the view that convictions, together with other matters meant that the applicant was not a fit and proper person to hold a hackney/private hire driver's licence then the application could be refused with the support and guidance of the Institute of Licensing.

It was considered that the January 2019 incident was very serious. While he was a licensed taxi driver the applicant moved road barriers to continue on his journey. He had

acted illegally and had shown a lack of appreciation to the health and safety of his passengers placing them in a situation of considerable risk.

In the Sub-committee's view paragraph 14.1 of the Policy was not relevant in this case as there was no situation whereby the applicant was awaiting a judgement in relation to a charge against him. (It was noted that the incident was subject to a Crown Court appeal). However, the Policy referred to an outstanding summons and it was considered that the summons the applicant had received in January 2019 had been answered as he had been convicted by Caernarfon Magistrates' Court in September 2019. Consequently, as paragraph 14.1 was not relevant, the Sub-committee was of the view that there were grounds to defer the application as a result of the Crown Court appeal.

Having carefully considered all the evidence and information, the Sub-committee was not 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 applicant had the right to submit an appeal to Caernarfon Magistrates' Court against the Sub-committee's decision and this should be submitted to the Chief Executive, Llandudno Magistrates' Court within 21 days of receiving the letter confirming the Sub-committee's decision.

The meeting commenced at 10.15am and concluded at 11.00am.