

At a meeting of the Licensing Panel held in Council Chamber, Allerdale House on Wednesday 10 August 2016 at 2.30 pm

## **Members**

Councillor Angela Kendall (Chair)  
Councillor Tony Annison  
Councillor Bill Pegram

Councillor Ron Munby  
Councillor Stephen Stoddart

## **Staff Present**

B Carlin, G Collinson, D Devine and M Tomlinson

### **110. Election of Chairman**

Councillor A Kendall was elected Chair for the ensuing meeting.

### **111. Declaration of Interests**

None declared.

### **112. Questions**

None received.

### **113. Application for Street Trading Consent - CS15**

The Service Support Officer submitted a report for the Licensing Panel to consider an application for street trading consent in accordance with Section 3 of the Local Government (Miscellaneous Provisions) Act 1982.

Members were asked to take the Council's Revised Policy for Granting Street Trading Consent Applications into account when making their deliberations.

The application was for street trading consent for the sale of ice cream on Criffel Street, Silloth, opposite the junction with Wampool Street on 29 August 2016.

The applicant was invited into the meeting.

Members noted that two previous applications for street trading consent for the sale of ice cream on the same street and date had been refused at the Licensing Panel meeting on 29 June 2016. The applications had been refused on the grounds that they were contrary to section 3 (d) of the Council's Revised Policy for Granting Street Trading Consent which set out:

3. Where the imposition of conditions is not adequate to control potential problems, applications will be refused. Refusal or withdrawal of street trading consents will be normal in the following circumstances:-
  - (d) where granting of a consent for the sale of goods or services would conflict with those provided by nearby shops

The Panel was informed that consultation had been carried out in accordance with the Council's policy. The comments received were set out in the report.

The applicant was asked to make representation on the application.

Silloth Carnival was being held on the date that street trading consent was applied for and the applicant considered the carnival to cause too much demand for the town's shops to handle alone.

Members asked the applicant if he had talked to the organisers of Silloth Carnival about trading on the street on this date. The applicant replied that he had not been able to communicate with them.

The applicant, Service Support Officer and Senior Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Panel considered the information provided by the Service Support Officer and the applicant.

Members were concerned that there seemed to be a lack of a relationship between the event organisers for Silloth Carnival and traders applying for street trading consent.

Councillor A Kendall moved that the application be approved on the grounds that not enough evidence had been provided to show that granting the application would conflict with the Council's Revised Policy for Granting Street Trading Consent Applications. Councillor B Pegram seconded.

A vote was taken; 4 in favour of approving the application and 1 abstention.

The motion in favour of approving the application was carried.

The applicant, Service Support Officer and Senior Licensing and Compliance Officer returned to the meeting.

The Chair read out the Panel's decision and the reasons for it.

Members asked the Service Support Officer to contact the event organisers for Silloth Carnival with an aim to encourage a relationship with traders for future events.

### **Decision**

The application was approved.

### **Reasons for the Decision**

The application was approved on the grounds that not enough evidence had been provided to show that granting the application would conflict with the Council's Revised Policy for Granting Street Trading Consent Applications.

## **Resolved**

That the application for street trading consent be approved.

### **114. The Chairman will move:**

The Chairman moved that under Section 100 (A) (4) of the Local Government Act 1972, the public be excluded from the meeting for the following item on the grounds that it may involve the likely disclosure of exempt information as defined in paragraph 1 of part 1 of Schedule 12 (a) of the Act.

### **115. Application for the Grant of a Hackney Carriage Driver Licence**

The Senior Licensing and Compliance Officer introduced a report for the Licensing Panel to consider whether a person who had made an application for the grant of a Hackney Carriage Driver Licence was a fit and proper person to hold such a licence.

The applicant and his representative were invited into the meeting.

The Senior Licensing and Compliance Officer provided the Panel with a background of the applicant and the application. The report set out key points for consideration, options available to the Panel and the officer's recommendation.

The applicant had provided the following in support of his application:

- Doctor's Medical (MED2) dated 16 June 2016
- Hackney Carriage/Private Hire Test Assessment Pass Certificate dated 26 May 2016
- Application payment
- DVLA plastic driving licence card to review driving licence details on Gov.uk website
- Enhanced Disclosure and Barring Certificate dated 14 July 2016

The driving licence contained no penalty points or convictions, the Doctor's Medical (MED2) declared the applicant fit to act as a Hackney Carriage Driver and the applicant passed the Driving Standards Agency Hackney Carriage/Private Hire Test Assessment in line with the conditions of application.

The Disclosure and Barring Service Certificate contained information under the section for Police Records of Convictions, Cautions, Reprimands and Warnings including several convictions for a range of offences over a sustained period of years. Under the Rehabilitation of Offenders Act 1974 all of the applicant's convictions were now spent. However, the Act was exempt for licensing Hackney Carriage or Private Hire Vehicle drivers.

The Enhanced Disclosure and Barring Service Certificate requested checks be done on the following, of which no information was recorded against each part:

- a) Information from the list held under Section 142 of the Education Act 2002;

- b) DBS Children's Barred List information;
- c) DBS Adults' Barred List information; and
- d) Other relevant information disclosed at the Chief Police Officer(s) discretion.

Guideline 1 (b) of the Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence required an application to be referred to the Licensing Panel where any conviction or caution as laid down in the Guidelines Relating to the Relevance of Convictions was disclosed. The guidelines set out:

"For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions."

On the matter of violence and abusive behaviour offenses, the Statement of Policy set out:

#### 5. Violence and Abusive Behaviour

- (a) As Hackney Carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violent or abusive offences. This category includes public order offences and criminal damage.
- (b) At least five years free of such convictions will normally be necessary before an application is entertained and even then a strict warning as to future conduct will be given

The applicant had been cautioned for an offence involving violence on 3 May 2012.

The applicant was asked to make representation on his application.

The applicant's representative was asked to make representation on the application.

Character references for the applicant were tabled at the meeting.

The applicant, his representative and the Senior Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Panel considered the information in the Licensing and Compliance Officer's report and the representations made by the applicant and his representative.

The Panel considered the options available to it in paragraph 4 of the report.

Councillor R Munby moved that the application for the grant of a Hackney Carriage Driver Licence be refused on the grounds that the applicant was not a fit and proper person to hold such a licence in accordance with Section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976. Councillor T Annison seconded.

A vote was taken; 5 in favour of refusal and 0 against.

The motion in favour of refusing the application for the grant of a Hackney Carriage Driver Licence was carried.

The applicant, his representative and the Senior Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision, the reasons for it and of his right to appeal.

## **Decision**

The application was refused.

## **Reasons for the Decision**

The Panel made its decision having regard to the following:

- The Council's Statement of Policy Concerning the Relevance of Criminal Convictions Relating to the Determination of Application or Renewal for a Hackney Carriage/Private Hire Driver's Licence, in particular:

The Guidelines Relating to the Relevance of Convictions set out:

"For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions."

And;

The Statement of Policy set out:

### **5. Violence and Abusive Behaviour**

- (a) As Hackney Carriage and Private Hire Vehicle drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violent or abusive offences. This category includes public order offences and criminal damage.
  - (b) At least five years free of such convictions will normally be necessary before an application is entertained and even then a strict warning as to future conduct will be given
- The Licensing and Compliance Officer's recommendation
  - Concerns around the history of criminal convictions as revealed by the Disclosure and Barring Service check
  - The applicant was cautioned for an offence involving violence on 3 May 2012. The Panel did not find there to be any exceptional circumstances

in the evidence provided to the Panel that would have justified deviating from the Council's policy.

- The Panel had strict guidance and legislation, which was clear that when considering convictions they are never spent for consideration of applications regarding Hackney Carriage and Private Hire Drivers' Licences. A Hackney Carriage and Private Hire Drivers' position was one of trust and honesty. The Licensing Authority's key objective was ensuring public safety and protection from criminal activity.
- Character references for the applicant and the evidence given at the meeting in support of the application. The Panel did not conclude that this evidence was sufficient to override its findings.

### **Resolved**

The application for the grant of a Hackney Carriage Driver Licence be refused under Section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 (not satisfied that the applicant is a fit and proper person to hold a driver's licence).

**The meeting closed at 3.40 pm**