

At a meeting of the Licensing Panel held in Executive Meeting Room, Allerdale House on Wednesday 6 December 2017 at 2.30 pm

### **Members**

Councillor Angela Kendall (Chair)  
Councillor Malcolm Grainger  
Councillor Billy Miskelly

Councillor Peter Kendall  
Councillor Jacqueline Mounsey

### **Staff Present**

D Devine, D Fletcher, J Morgan and A Robinson

#### **259. Election of Chair**

Councillor A Kendall was elected Chairman for the ensuing meeting.

#### **260. Declaration of Interests**

None declared.

#### **261. Questions**

None received.

#### **262. To consider an application for a Hackney Carriage Driver Licence**

The Licensing and Compliance Officer submitted 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 was invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate – the certificate contained information which fell within the Council's policy for convictions. The applicant had received a conviction in September 2017.
- DVLA driving licence – the licence showed a road traffic offence in May 2016 and a conviction in August 2014.
- Doctors Medical dated 26 October 2017 – the doctor had signed the applicant as fit to drive a hackney carriage vehicle.

Checks on the following had been carried out as part of the process for an Enhanced Disclosure and Barring Service Certificate and no information was recorded against each part:

- Information from the list held under Section 142 of the Education Act 2002
- DBS Children's Barred List information
- DBS Adults' Barred List Information
- Other relevant information disclosed at the Chief Police Officer(s) discretion

The Licensing and Compliance Officer set out the key points for consideration as follows:

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 set out:

'16. ... if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:

- 16.1 how relevant the offence(s) are to the licence being applied for.
- 16.2 how serious the offence(s) were.
- 16.3 when the offence(s) were committed.
- 16.4 the date of conviction.
- 16.5 circumstances of the individual concerned
- 16.6 sentence imposed by the court.
- 16.7 whether they form part of a pattern of offending.
- 16.8 any other character check considered reasonable (e.g. personal references)
- 16.9 any other factors that might be relevant.'

'33. While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when period of time is more likely to give cause for concern than an isolated minor conviction...'

'37.1 A serious view will be taken of serious road traffic offences. An isolated incident in the past will not necessarily stop a Private Hire or Hackney Carriage driver licence being granted provided he/she has been free of conviction 3 years; however, strict warning should be given as to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.'

'37.3 At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would normally be granted for a Hackney Carriage or Private Hire driver licence...'

On the matter of drugs:

'40.1 A serious view shall be taken of convictions of this nature. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. An application with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained.'

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence. The information revealed on the applicant's DVLA driving licence showed that there was a disqualification which ended on 31 August 2015. Paragraph 37.3 of the Policy stated that at least three years should elapse, after the restoration of the DVLA driving licence, before a licence would be granted. There was also a serious road traffic offence committed in 2016. Paragraph 37.1 made reference to applicants being free of conviction for three years.

The applicant gave representation on the application.

The applicant and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and advice from officers. The Panel also considered the relevant legislation and 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.

Councillor M Grainger moved that the application be refused. This was seconded by Councillor P Kendall.

A vote was taken; the vote in favour of refusing the application was unanimous. The motion was carried.

The applicant and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was informed that, if aggrieved by the decision of the Council, he had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

## **Decision**

To refuse to grant the licence on the basis that the Licensing Panel was not satisfied that the applicant was a fit and proper person to hold a driver's licence under section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 and in accordance with the officer's recommendation.

Paragraph 37.3 of the 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 stated that at least three years should elapse after the restoration of the DVLA driving licence following disqualification before a licence would be granted. Three years had not passed since the return of the licence. The period would elapse on 11 August 2018.

There was a further serious road traffic offence dated 27 May 2016, which was a material consideration for the Panel when making its decision. In addition, whilst the drugs offence was isolated, it was also taken into account.

The Licensing Panel considered the convictions revealed in the application on their own merits. The Panel listened to the applicant's representations and the information that he provided and sought to balance his interests against the overriding objectives of the protection of the public and the prevention of crime and disorder. It was considered that the nature of the convictions showed a significant risk to the public, particularly due to how recent the driving offences were.

### **Resolved**

That the application be refused.

### **263. To consider an application for a Hackney Carriage Driver Licence**

The Licensing and Compliance Officer submitted 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 was invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate – the certificate contained information which fell within the Council's policy for convictions. The applicant had received a caution in 1991 and a number of convictions between 1996 and 2006.
- DVLA plastic driving licence – the licence contained one disqualification which ended on 4 July 2016 and would be removed from the licence on 15 December 2019.
- Doctors Medical dated 2 November 2017 – the doctor had signed the applicant as fit to drive a hackney carriage vehicle.

Checks on the following had been carried out as part of the process for an Enhanced Disclosure and Barring Service Certificate and no information was recorded against each part:

- Information from the list held under Section 142 of the Education Act 2002
- DBS Children's Barred List information
- DBS Adults' Barred List Information
- Other relevant information disclosed at the Chief Police Officer(s) discretion

The Licensing and Compliance Officer set out the key points for consideration as follows:

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 set out:

'16. ... if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:

- 16.1 how relevant the offence(s) are to the licence being applied for.
- 16.2 how serious the offence(s) were.
- 16.3 when the offence(s) were committed.
- 16.4 the date of conviction.
- 16.5 circumstances of the individual concerned
- 16.6 sentence imposed by the court.
- 16.7 whether they form part of a pattern of offending.
- 16.8 any other character check considered reasonable (e.g. personal references)
- 16.9 any other factors that might be relevant.'

'33. While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when period of time is more likely to give cause for concern than an isolated minor conviction...'

'37.1 A serious view will be taken of serious road traffic offences. An isolated incident in the past will not necessarily stop a Private Hire or Hackney Carriage driver licence being granted provided he/she has been free of conviction 3 years; however, strict warning should be given as to future behaviour. More than one conviction for these offences would normally prevent a licence being granted or renewed.'

'37.3 At least three years should elapse (after the restoration of the DVLA driving licence), before a licence would normally be granted for a Hackney Carriage or Private Hire driver licence...'

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence. The information revealed on the applicant's DVLA driving licence showed that there was a disqualification which ended on 4 July 2016.

Paragraph 37.3 of the Policy stated that at least three years should elapse, after the restoration of the DVLA driving licence, before a licence would be granted. There was also a pattern of serious road traffic offences committed between 2000 and 2016.

The applicant gave representation on the application.

The applicant and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and advice from officers. The Panel also considered the relevant legislation and 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.

Councillor B Miskelly moved that the application be refused. This was seconded by Councillor M Grainger.

A vote was taken; the vote in favour of refusing the application was unanimous. The motion was carried.

The applicant and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was informed that, if aggrieved by the decision of the Council, he had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

## **Decision**

To refuse to grant the licence on the basis that the Licensing Panel was not satisfied that the applicant was a fit and proper person to hold a driver's licence under section 59(1)(a) of the Local Government (Miscellaneous Provisions) Act 1976 and in accordance with the officer's recommendation.

The applicant's DBS certificate showed a lengthy pattern of offending, including traffic offences and violence offences. Whilst the Panel acknowledged that a number of years had passed since some of the offences, and the policy stated that this could show a significant reduction in the risk to the public, the overriding considerations were the protection of the public and the prevention of crime and disorder. All convictions had to be considered on their own merits. In addition, the most recent traffic offences were in 2016. It was considered that the number and nature of the convictions revealed in the application still showed a significant risk to the public.

In addition, paragraph 37.3 of the 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 stated that at least three years should elapse after the restoration of the DVLA driving licence

following disqualification before a licence would be granted. Only 17 months had elapsed since the licence was restored, which was a material consideration that led to the decision.

### **Resolved**

That the application be refused.

#### **264. To consider an application for a Hackney Carriage Driver Licence**

The Licensing and Compliance Officer submitted 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 her prospective employer were invited into the meeting.

The Licensing and Compliance Officer provided the Panel with details on the application.

The applicant had provided the following as part of the application:

- Disclosure and Barring Service (DBS) Certificate – the certificate contained information which fell within the Council's policy for convictions. The applicant had received a number of convictions between 1997 and 2010.
- DVLA driving licence – the licence contained no current penalty points.
- Doctors Medical dated 1 August 2017 – the doctor had signed the applicant as fit to drive a hackney carriage vehicle.

Checks on the following had been carried out as part of the process for an Enhanced Disclosure and Barring Service Certificate and no information was recorded against each part:

- Information from the list held under Section 142 of the Education Act 2002
- DBS Children's Barred List information
- DBS Adults' Barred List Information
- Other relevant information disclosed at the Chief Police Officer(s) discretion

The Licensing and Compliance Officer set out the key points for consideration as follows:

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 set out:

- '16. ... if an applicant has any convictions, warnings, cautions or charges awaiting trial, the Council will look into:
- 16.1 how relevant the offence(s) are to the licence being applied for.
  - 16.2 how serious the offence(s) were.
  - 16.3 when the offence(s) were committed.
  - 16.4 the date of conviction.
  - 16.5 circumstances of the individual concerned
  - 16.6 sentence imposed by the court.
  - 16.7 whether they form part of a pattern of offending.
  - 16.8 any other character check considered reasonable (e.g. personal references)
  - 16.9 any other factors that might be relevant.'
- '33. While it is possible that an applicant may have a number of convictions that, individually, meet the above guidelines, the overall offending history must be considered when period of time is more likely to give cause for concern than an isolated minor conviction...'
- '42.1 As Hackney Carriage and Private Hire vehicle drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.'

The Licensing and Compliance Officer recommended that the licence be refused on the grounds that the applicant was not a fit and proper person to hold a licence. The information revealed on the applicant's DVLA driving licence showed there to be a pattern of violence offences with the most recent being in 2010.

The applicant and her prospective employer gave representation on the application.

The applicant, prospective employer and the Licensing and Compliance Officer left the meeting while the Panel considered the application.

The Licensing Panel considered the application, officer's report, representations made by the applicant and her prospective employer, a character reference and advice from officers. The Panel also considered the relevant legislation and 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.

Councillor M Grainger moved that the application be granted. This was seconded by Councillor J Mounsey.

A vote was taken; the vote in favour of granting the application was unanimous. The motion was carried.

The applicant, her prospective employer and the Licensing and Compliance Officer returned to the meeting.

The applicant was informed of the Panel's decision and its reasons.

The applicant was issued a strict warning about future conduct and reminded that the Council had enforcement powers which would be exercised in the event it became necessary to do so.

The applicant was informed that, if aggrieved by the decision of the Council, she had a right of appeal to a magistrates' court within 21 days of receiving written notification of the decision.

### **Decision**

To agree to grant the licence for a period of six months, after which the decision to continue to grant the licence be delegated to the Licensing and Compliance Officer should there be no further issues.

The Panel noted the most recent conviction was seven years ago. The Panel also noted that there were some other offences which were between 1997 and 2004. It was considered that the applicant had clearly shown remorse and had obtained employment in a driving capacity on behalf of Cumbria County Council. Members also noted that the applicant had been made an offer of further employment, conditional on the approval of the licence application.

### **Resolved**

That the licence be granted for a period of six months, after which the decision to continue to grant the licence be delegated to the Licensing and Compliance Officer should there be no further issues.

**The meeting closed at 4.10 pm**