

At a meeting of the Licensing Regulatory Panel held in Council Chamber - Allerdale House, Workington on Monday 19 March 2018 at 1.30 pm

Members

Councillor Angela Kendall (Chair)
Councillor Len Davies
Councillor Billy Miskelly

Councillor Hilary Harrington
Councillor Christine Smith

Staff Present

D Devine, D Fletcher and J Morgan

395. Election of Chair

Councillor A Kendall was elected Chair for the ensuing meeting.

396. Declaration of Interests

None declared.

397. Questions

None received.

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 items on the grounds that they may involve the likely disclosure of exempt information as defined in paragraph 2 of part 1 of Schedule 12 (a) of the Act.

398. To consider an application for a Hackney Carriage Driver Licence

The Licensing and Compliance Officer informed the Licensing Panel that there was an error in the report. An application for a renewal of a private hire driver's licence had been made – not an application for a hackney carriage driver's licence.

The Licensing and Compliance Officer drew the Panel's attention to the relevant legislation for the grant of private hire vehicle licences – section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing and Compliance Officer sought the Licensing Panel to consider whether the applicant was a fit and proper person to hold a private hire driver's licence.

The applicant and his current employer were invited into the meeting.

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

The applicant's DVLA licence was verified as part of the application process. The licence was shown to contain 9 penalty points for speeding offences in 2016 and 2017.

The applicant had provided a Disclosure and Barring Service (DBS) Certificate as part of the application. The certificate showed no criminal conviction or caution information.

As an existing applicant, the applicant had completed the DSA Driving Assessment in 2015. He had also provided documentation in 2017 to prove his right to work in the UK and satisfied the requirements of the Immigration Act 2016.

The applicant had provided a completed medical form that signed him fit to drive a private hire vehicle.

The Licensing and Compliance Officer set out the key points for consideration.

Paragraph 16 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 stated that if an applicant had any convictions, warnings, cautions or charges awaiting trial, the Council would look into:

- 16.1 how relevant the offence(s) were 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 formed 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.

Paragraph 36.2 of the Council's policy on the relevance of criminal convictions stated that if an applicant had 8 or more current penalty points on their DVLA driving licence the application would be considered to determine his/her suitability.

The Licensing and Compliance Officer recommended that the Licensing Panel refuse the application on the grounds that the applicant was not a fit and proper person to hold a licence. The information revealed on the applicant's driving licence showed a pattern of speeding offences.

The applicant and his employer gave representation on the application.

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

The Licensing Panel considered the information provided by the Licensing and Compliance Officer, representations made by the applicant and his employer and advice from officers. The Panel also considered all relevant legislation and the Council's policy on the relevance of criminal convictions.

The Panel considered the options it could take with regard to the application, set out in the report.

Councillor H Harrington moved that the application be refused as per the officer's recommendation. This was seconded by Councillor B Miskelly.

A vote was taken. The vote in favour of refusal was unanimous.

The motion in favour of refusing to grant the private hire driver's licence was carried.

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

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

The applicant was informed that he had a right to appeal the decision within 21 days of receiving the notice in writing.

Decision

To refuse to grant the private hire driver's licence.

Reasons for the Decision

The Panel made its decision having regard to the following:

- The application had come before the Panel as per the Council's policy on the relevance of criminal convictions, given that the applicant had nine current penalty points. The policy stated that an application must be referred to the Panel where an applicant had eight or more penalty points.
- The Licensing Panel's overriding objective was to protect the safety of the public. The Panel considered the pattern of speeding offences and the fact that the applicant had over eight penalty points. The Panel also noted that two of the offences were committed while carrying passengers as a private hire driver, which was an important consideration in making the decision.

Resolved

That the application for a private hire driver's licence be refused.

399. To consider an application for a Private Hire 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 a private hire driver's 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's DVLA driving licence was verified as part of the application process. The licence contained no current penalty points.

The applicant had provided a Disclosure and Barring Service (DBS) Certificate as part of the application. The certificate contained information which fell within the Council's policy on the relevance of criminal convictions.

The applicant had a current Certificate of Professional Competence which exempted him from having to retake the DVSA taxi assessment or replacement assessment.

The applicant had provided a completed medical form that signed him fit to drive a private hire vehicle.

The applicant had provided the relevant documents to prove his right to work in the UK.

The Licensing and Compliance Officer set out the key points for consideration.

The process for an Enhanced Disclosure and Barring Service Certificate also requested checks to be done on the following and 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.

Paragraph 16 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 stated that if an applicant had any convictions, warnings, cautions or charges awaiting trial, the Council would look into:

- 16.1 how relevant the offence(s) were 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 formed 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.

The applicant's DBS Certificate contained information under the section for Police Records of Convictions, Cautions, Reprimands and Warnings.

The applicant's convictions fell under the category for violence offences. Paragraph 42.1 of the Council's policy on the relevance of criminal convictions stated that applicants should be free of conviction for at least three years before an application was entertained and even then a strict warning should be administered.

Paragraph 33 on the Council's policy on the relevance of criminal convictions stated that:

'While it is possible that an applicant may have a number of convictions that, individually, meet the [...] 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. Obviously some discretion can be afforded if an offence disclosed is isolated and there are mitigating circumstances, but the overriding consideration is the protection of the public.'

The Licensing and Compliance Officer recommended that the Licensing Panel refuse the application on the grounds that the applicant was not a fit and proper person to hold a licence. The information revealed on the applicant's DBS certificate showed there to be a pattern of violence offences with the most recent conviction being in 2017.

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 information provided by the Licensing and Compliance Officer, the representations from the applicant and advice from officers. The Panel also considered all relevant legislation and the Council's policy on the relevance of criminal convictions.

The Panel considered the options it could take with regard to the application, set out in the report.

Councillor H Harrington moved that the application be refused as per the officer's recommendation. This was seconded by Councillor B Miskelly.

A vote was taken. The vote in favour of refusal was unanimous.

The motion in favour of refusing to grant the private hire driver's licence was carried.

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

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

The applicant was informed that he had a right to appeal the decision within 21 days of receiving the notice in writing.

Decision

To refuse to grant the private hire driver's licence.

Reasons for the Decision

The Panel made its decision having regard to the following:

- The Panel considered the applicant's overall offending history, as well as the fact that he applicant had a very recent conviction for a violence offence in 2017. Paragraph 42.1 of the Council's policy on the relevance of criminal convictions stated that at least three years free of convictions should be shown before an application was entertained. In addition, the policy stated at paragraph 33 that the overall offending history must be considered when period of time was more likely to give cause for concern than an isolated minor conviction.
- The Licensing Panel's overriding considerations were the protection of the public and the prevention of crime and disorder. All convictions were considered on their own merits. It was considered that the nature of the convictions revealed in the application showed a significant risk to the public, particularly due to the fact that the applicant had a recent offence, when considering the policy on the relevance of criminal convictions.

Resolved

That the application for a private hire driver's licence be refused.

The meeting closed at 3.22 pm