

At a meeting of the Licensing Regulatory Panel held in Council Chamber - Allerdale House, Workington on Monday 18 June 2018 at 2.00 pm

Members

Councillor Angela Kendall (Chair)

Councillor Mary Bainbridge

Councillor Jacqueline Mounsey

Councillor Hilary Harrington

Councillor Ron Munby

Apologies for absence were received from Councillor Billy Miskelly

Staff Present

B Carlin, D Devine and D Fletcher

57. Election of Chair

Councillor A Kendall was elected Chair for the ensuing meeting.

58. Declaration of Interests

None declared.

59. Questions

None received.

The Chair moved:

That under Section 100A (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 1 of part 1 of Schedule 12A of the Act.

The Panel agreed:

That the following item be considered at the end of the agenda, as the applicant had not yet arrived for the meeting.

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

As the applicant was not present at the meeting, the Panel agreed that the application be deferred to a future meeting.

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

The Licensing and Compliance Officer submitted a report for the Licensing Regulatory 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 had no content which fell within the Council’s policy for convictions.
- DVLA driving licence – at the time of the application the licence contained 9 penalty points. At the time of the meeting, the licence contained 6 penalty points.
- Medical form – at the time of the application, the applicant had not provided a completed medical form. At the time of the meeting, the applicant had provided a medical form. However, the form was incomplete.

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:

‘Consideration of Disclosed Criminal History

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.’

’36. Minor Traffic Offences

. . .

36.2 If an applicant has 8 or more current penalty points on their DVLA driving licence the application will be considered by the Licensing Panel to determine his/her suitability’

'37. Serious Road Traffic Offences

- 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 for 3 years, however strict warning should be given as to future behaviour.'

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 driving licence showed 9 penalty points at the time of the application. At the time of the meeting, the driving licence contained 6 penalty points. The applicant was not able to demonstrate 3 years free of conviction.

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 all 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 J Mounsey moved that the application for a driver's licence be refused, as per the officer's recommendation. This was seconded by Councillor R Munby.

A vote was taken; the vote in favour of refusing the licence was unanimous.

The motion in favour of refusing the 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 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/Reasons

To refuse to grant the Hackney Carriage Driver Licence.

The application had come before the Licensing Panel as per 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, given that he had 9 penalty points at the time of the

application. The policy stated that an application must be referred to the Panel where an applicant had 8 or more penalty points.

The overriding objective was to protect the safety of the public. The Panel had considered the pattern of speeding and serious road traffic offences, and the fact that the applicant had more than 8 penalty points.

The Panel also noted that the applicant indicated he had no intention of using his licence within the borough of Allerdale.

In making its decision, the Panel listened to the applicant's representations and the information he provided and sought to balance his interests against the overriding objective to protect the safety of the public.

Resolved

That the application for a Hackney Carriage Driver Licence be refused.

62. To consider an application for a Private Hire Driver Licence

The Licensing and Compliance Officer submitted a report for the Licensing Regulatory Panel to consider whether a person who had made an application for the grant of a Private Hire 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.
- DVLA driving licence – the licence contained no current penalty points but showed a disqualification mentioned in the DBS certificate.
- Medical form – the applicant had provided a completed medical form which signed her as fit to drive a private hire vehicle.

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.

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

The DBS certificate contained information under the section for Police Records of Convictions, Cautions, Reprimands and Warnings. Under the Rehabilitation of Offenders Act 1974 convictions became spent after a period of time specified in the chart attached as an appendix. However, the Rehabilitation of Offenders Act 1974 was exempt for licensing hackney carriage or private hire vehicle drivers and Members were entitled to take into consideration spent convictions when deciding whether the applicant was a fit and proper person to hold a driver's licence.

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:

'Consideration of Disclosed Criminal History

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.'

'36. Minor Traffic Offences

- 36.1 Convictions for minor traffic offences should not prevent a person from proceeding with an application for a Private Hire or Hackney Carriage driver licence; however, an application containing multiple offences of this nature . . . will be considered in a more serious light.'

'38. Drink driving/driving under the influence of drugs

- 38.1 As licensees are professional vocational drivers, a serious view is taken of convictions for driving, or being in charge of a vehicle while under the influence of drink or drugs. An isolated incident would not necessarily debar an applicant from proceeding on the restoration of his DVLA driving licence but he should be warned as to the significant risk to his licence status in the event of re-offending.

38.2 . . . At least 3 years, after the restoration of the driving licence following a drink drive conviction should elapse before an application will be considered . . .’

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 DBS certificate showed there to be a serious offence of driving a motor vehicle with excess alcohol. This offence was committed at the same time as being uninsured and whilst driving otherwise in accordance with a licence.

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

The applicant, her 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 and advice from officers. The Panel also considered all 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 H Harrington moved that the application for a driver’s licence be refused, as per the officer’s recommendation. This was seconded by Councillor R Munby.

A vote was taken; 2 voted in favour of refusing the licence, 2 voted against and 1 abstained. The Chair exercised her casting vote against the motion.

The motion in favour of refusing the licence was lost.

Councillor A Kendall moved that the application for a driver’s licence be granted. This was seconded by Councillor M Bainbridge.

A vote was taken; 2 voted in favour of granting the licence, 2 voted against and 1 abstained. The Chair exercised her casting vote in favour of the motion.

The motion in favour of granting the licence 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.

In accordance with 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, the Panel issued a strict warning to the applicant about her future conduct and reminded her the Council had enforcement powers which it would exercise in the event that 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/Reasons

To grant the Private Hire Driver Licence.

The Panel considered the information the applicant had provided in conjunction with the overriding objective of protecting the safety of the public.

In making its decision, the Panel noted that while the applicant had three motoring and traffic convictions, the most recent conviction was 2009. The Panel noted that the applicant had matured as a person and that she had clearly shown remorse for her convictions. The Panel also considered the comments made by the applicant's prospective employer.

Resolved

That the application for a Private Hire Driver Licence be granted.

The meeting closed at 3.20 pm