

NORTH DEVON COUNCIL

Minutes of a meeting of the Licensing and Community Safety Sub Committee B held in the Barum Room - Brynsworthy on Thursday, 23rd November, 2023 at 1.00 pm

PRESENT: Members:

Councillors Biederman, Whitehead and Williams

Officers:

Paralegal, Solicitor and Licensing Officer and Corporate and Community Services Officer

11. APPOINTMENT OF CHAIR

The Corporate and Community Services Officer requested a nomination for Chair.

RESOLVED that Councillor Biederman be appointed Chair.

12. APOLOGIES FOR ABSENCE

There were no apologies for absence.

13. ITEMS BROUGHT FORWARD WHICH IN THE OPINION OF THE CHAIR SHOULD BE CONSIDERED BY THE MEETING AS A MATTER OF URGENCY

There were no items, which in the opinion of the Chair, to be considered as a matter of urgency.

14. DECLARATIONS OF INTEREST

There were no declarations of interest announced.

15. EXCLUSION OF PUBLIC AND PRESS AND RESTRICTION OF DOCUMENTS

RESOLVED:

(a) That, under Section 100(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item as it involved the likely disclosure of exempt information as defined in Paragraph 2 of Part 1 of the Schedule 12A of the Act (as amended from time to time), namely information which was likely to reveal the identity of an individual.

(b) That all documents and reports relating to the item be confirmed as "Not for Publication".

16. APPLICATION FOR THE GRANT OF A HACKNEY CARRIAGE AND A PRIVATE HIRE DRIVER'S LICENCE- (REF NB007/23)

The Chair introduced himself and invited those in the room to introduce themselves.

The Licensing Officer confirmed that the formal requirements had been met in the submission of the application.

The Legal Officer was asked to outline the hearing proceedings.

The Licensing Officer presented the report and highlighted the following:

- An application for a Hackney Carriage and Private Hire Driver's Licence was received on 29 August 2023.
- The results of a Disclosure and Barring Service check were received on 19 October 2023 which showed two recorded convictions from 6 September 1996.
- The Applicant also disclosed an offence which did not appear on the Disclosure and Barring Service check. He declared that approximately 15 years ago he was found to be driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit.
- The Applicant currently worked as a class 1 HGV driver.
- The Applicant had attended a formal interview which was audio recorded and conducted under the conditions of the Police and Criminal Evidence Act 1984.
- The Applicant had been sentenced to 200 hours of community service, a two year supervision order, £100 compensation and £100 costs. He immediately after the offence decided he did not wish to remain in friendship with these boys and had no further contact with them.
- He further clarified the circumstances of the offence of driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit.
- The North Devon Hackney Carriage and Private Hire Licensing Policy (March 2022), appendix H, provided the following guidelines in relation to previous convictions:
 - Appendix H (18) section C
Where an applicant has a conviction for an offence of violence against the person, or connected with any offence of violence, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed.
 - Appendix H (18) section D
Where an applicant has a conviction for possession of a weapon or any other weapon related offence, a licence will not be granted until at least seven years have elapsed since the completion of any sentence imposed.
 - Appendix H (18) section J
Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed.
- All offences disclosed on the Disclosure and Barring Service check by the Applicant had now elapsed and the guidelines suggest that granting of a licence could now be considered.

- Whilst the guidelines suggested that sufficient time had now elapsed between the time of offences and the application a further consideration of whether or not the applicant was dishonest in his application had to be considered:
 - General Policy section 12
Dishonesty
Any dishonesty by any applicant or other person on the applicant's behalf which was discovered to have occurred in any part of any application process (e.g. failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution.
- During his interview the Applicant stated that the convictions for robbery and possession of a firearm occurred 28 years ago when he was 15 years old and he had forgotten all about it. He felt that the disclosure of the offence of driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit (which did not appear on his Disclosure and Barring Service Check) demonstrated he had not intended to deceive anyone or be dishonest during his application.
- The Applicant had written a letter in relation to the omission of the convictions as shown at Appendix D of the report.

The Applicant was invited to present his case. He explained the circumstances around the incident that happened when he was 15 years old. He explained that he enjoyed driving for a living but that due to back trouble was starting to struggle with the heavy loading involved with the HGV driving and hoped that taxi driving would be lighter.

In response to questions, the Applicant gave the following responses:

- He was a family man and enjoyed days out with his family he had moved to Devon for a better life he was a friendly, happy person.
- It wasn't that he thought the 200 hours community service was irrelevant he had just forgotten all about it.
- He no longer drank alcohol.
- He regretted the incidents.
- He worked hard and played hard and to accommodate the drop in regular hours he would continue to supplement his income with the HGV driving, he was aware he would need to be aware of the number of hours he had driven and take the necessary breaks
- On checking with the Police about the classification of the firearm as a shotgun he was told that it would be entered as shotgun regardless of it being one.

The Licensing Officer summed up with explaining that the Applicant had been very co-operative throughout the whole application process and had happily attended a recorded interview to discuss his convictions further.

The Applicant summed up by saying he had nothing further to add other than he looked forward to becoming a member of the community.

RESOLVED that everyone be excluded from the meeting with the exception of the Members, Solicitor, and Corporate and Community Services Officer in order for the

Sub-Committee to receive legal advice in accordance with paragraph 5 of Schedule 12A of the Local Government Act 1972.

It being 14:14 and the Sub-Committee requested to recall the Applicant for further questions, the meeting reconvened.

The Chair invited the Applicant to provide further assurances of his status as a fit and proper person.

The Applicant was asked to read page 9 of the agenda section 3.1 (iii):

- In assessing the carious information collected in relation to the 'fit and proper' status of an applicant or licence holder, the Licensing Authority would apply the following test:
- "Would the decision maker(s) charged with the ability to grant a licence, without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time day or night"? These include any dishonesty and offences involving violence against a person.

The Applicant reiterated he was not a violent person – he was a changed man and was looking to provide a nice future for himself and his family. Someone else had filled the form in on his behalf. He had forgotten about the convictions which were 28 years old and his thoughts had been focussed on the driving or being in charge of a motor vehicle with alcohol concentration above prescribed limit offence. His current role as a class 1 HGV driver involved him working away from home working with the Police on the removal of counterfeit goods from warehouses. He himself had been a victim of an attack while in his lorry but he had learned to always stay calm and in the vehicle, he had been a HGV driver for 15 years.

RESOLVED that everyone be excluded from the meeting with the exception of the Members, Paralegal, Solicitor, and Corporate and Community Services Officer in order for the Sub-Committee to receive legal advice in accordance with paragraph 5 of Schedule 12A of the Local Government Act 1972.

RESOLVED that everyone be re-admitted to the meeting.

The Chair requested that the Corporate and Community Services Officer read the proposed decision, which was voted on, and agreed.

The Members of the Sub-Committee had determined, with the high responsibility that the Licensing Authority had in the protection of the public in North Devon in mind, that the Applicant was not a fit and proper person to hold the above licences for the following reasons, pursuant to section 59 of the Local Government (Miscellaneous Provisions) Act 1976, Appendix H (12) and Section 4.1.2 of the Council's Hackney Carriage and Private Hire Licensing Policy dated March 2022 and the information that Members have heard today.

The reasons for this were the failure to:

- a) disclose the previous convictions of Robbery and Possession of a Firearm on 6th September 1996 at Birmingham Crown Court within the application process; and
- b) Provide adequate reassurance to Members of the sub-committee that the Applicant was a fit and proper person.

Appendix H (12) of the Council's Hackney Carriage and Private Hire Licensing Policy stated that any dishonesty occurring in any part of the application process, by the applicant or any other person, would result in a licence being refused. The evidence did not reassure Members that the Applicant was a fit and proper person despite being prompted for further evidence.

It was considered that the spent convictions were still relevant and serious enough to justify the refusal to grant a licence. Despite the length of time that had elapsed, there was insufficient evidence before Members to disregard the convictions.

RESOLVED that the application for a Hackney Carriage and a Private Hire Driver's Licence – (Ref NB0007/23) be refused.

Chair

The meeting ended at 3.13 pm

NOTE: These minutes will be confirmed as a correct record at the next meeting of the Committee.