

NORTH DEVON COUNCIL

Minutes of a meeting of Licensing and Community Safety Sub Committee E held in the Barum Room - Brynsworthy on Monday 25th November 2024 at 10.00 am

PRESENT:

Councillors Biederman, Quinn (substitute for Whitehead) and Williams

Officers:

Legal Advisor and Licensing Officer

Also Present:

Councillor Lethaby

1. APPOINTMENT OF CHAIR.

Councillor Biederman was nominated Chair for this Sub-Committee E.

RESOLVED that Councillor Biederman be appointed Chair.

2. APOLOGIES FOR ABSENCE.

There were no apologies of absence received.

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

The Chair introduced Councillor Lethaby as an observer and sought the applicants consent for him to stay for the hearing.

4. DECLARATIONS OF INTEREST.

No declarations of interest were announced.

5. 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 items 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- (b) That all documents and reports relating to the items be confirmed as “Not for Publication”.

6. DISCIPLINARY HEARING OF A PRIVATE HIRE LICENSED DRIVER – (REF NB008/24)

Also present: The Driver and Councillor Lethaby, Observing.

The Chair introduced himself and invited those present to introduce themselves.

The Driver confirmed he was happy for Councillor Lethaby to remain in the room and observe.

The Licensing Officer confirmed all requirements had been met in relation to this application.

The Legal Officer outlined the hearing process, explaining that the Licensing Officer would begin by presenting his report; the Sub-committee could then ask questions. The Driver would then be able to present his case and the Sub-Committee would ask questions. If there was a witness the Driver could call for them to present a case. Once all questions had been asked the Licensing Officer would sum up followed by the Driver. All public and press would then be asked to leave so that the Sub-committee could take legal advice to formulate its decision. Everyone would be readmitted to the meeting whereby the clerk would read the proposed decision and this would be voted on. A copy of the decision notice would be given to the Driver and the Chair would call the meeting to a close.

The Driver confirmed he understood the process.

The Licensing Officer handed the Driver a copy of the Institute of Licensing's Suitability Guidance (October 2024).

The Licensing Officer highlighted the following:

- The Driver was granted a Hackney Carriage and Private Hire licence in January 2020 which was subsequently renewed in January 2023.
- The next renewal was due in January 2026.
- A Private Hire Operators licence was held by the Driver and this was first granted February 2020 and expired February 2026.
- He also held a Private Hire Vehicle licence first granted in July 2021 and was due for renewal in July 2025.
- During his licence renewal in January 2023 the Driver disclosed he had received 3 penalty points on his driver's licence for exceeding the statutory speed limit on a public road this was dated December 2022.
- The yearly check carried out by the Council on the DVLA site found two further speeding offences each accruing three points bringing the total number of points on the licence to 9 over three separate incidences.
- Section 13.3 in Appendix O of the North Devon Council Hackney Carriage and Private Hire Licensing Policy states that drivers must notify the Licensing Team in writing, within a 48 hour period of any arrest and release, charge or conviction, receipt of a driving disqualification for any period of time, receipt of

any fixed penalty, or anti-social behaviour order imposed on him/her whilst the licence was in force.

- On 21 October 2024 the Driver was interviewed in accordance with the conditions of the Police and Criminal Evidence Act 1984 (PACE) in relation to the driving licence endorsements and the failure to notify the Licensing team at North Devon Council.
- A newsletter sent out to all drivers on 8 February 2024 reminded Drivers of the requirement to notify the Council within 48 hours, a copy of this newsletter could be seen at Appendix A of the agenda.
- In addition to the nine points on his DVLA licence the Driver had undertaken a speed awareness course, it being too soon for another to be taken.
- The Sub-Committee had to consider whether the Driver was a fit and proper person to hold a hackney carriage and private hire licence as failure to notify of the additional six points on the licence raised the question of honesty.

The Driver presented his case.

The Members of the Sub-Committee asked questions. The Driver gave the following responses to questions:

- His sister had recently passed away and as a result he was distracted when driving.
- One of the speeding incidents he was travelling at 42 mph in a 30 mph zone.
- Yes he did receive the newsletter and he did understand the requirements contained within the North Devon Council's policy.
- On the occasion of another speeding incidence he was travelling to pick up an elderly passenger sitting in the rain.
- He understood there was a certain amount of trust required between driver and customer especially as in some circumstances he entered their homes to help off load grocery shopping.
- He drove around 45,000 per annum.
- He was reminded of the need to notify us of his speeding offences during a conversation with another driver.
- Irrespective of the failure to notify of the speeding offences he felt he was a fit and proper person.
- He felt that not disclosing the offences was worse than the speeding itself.
- He usually picked up elderly customers and if he were not allowed to drive the customers would struggle to find anyone to replace him.

The Licensing Officer summed up his case by explaining to the Sub-Committee that it was helpful to have the Driver in front of them to answer questions. He was a laid back individual who enjoyed driving. The community would miss his service. He was very compassionate and went above and beyond in terms of the service he provided.

The Driver summed up by apologising for not declaring his offences and that he would definitely disclose in the future if it should happen again.

RESOLVED that everyone be excluded from the meeting with the exception of the Members, Legal Officer, 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.

That it being 11.35 all public and press be readmitted to the meeting.

The Chair asked the clerk to read out the proposed decision and the reasons for the proposed decision as follows:

Reasons for the decision:

The Licensing Authority has determined, with the high responsibility that the Licensing Authority has in respect to the protection of the public that you were not operating appropriately as a fit and proper person for the above licences for the following reasons, pursuant to section (61) (1) and (2B) of the Local Government (Miscellaneous Provisions) Act 1976, and Appendix H (18) (i) (I) and Section 4.12 of the Council's Hackney Carriage and Private Hire Licensing Policy dated December 2023, and the information that Members have heard today. A temporary suspension of Licence was proportionate to reflect this for 14 days and to undertake a driver awareness course and/or pass a driver assessment, with no more than eight minor infringements, within four months of this notice.

The reasons for this were:

- (a) There was no evidence of the Licensing Authority being notified of two driving offences dated 30 December 2023 and 17 July 2024 in line with reporting requirements of the Council's Hackney Carriage and Private Hire Licensing Policy; and
- (b) Accumulation of nine DVLA penalty points for speeding offences within a nineteen month period between December 2022 and July 2024.

Appendix H (18) (i) of the Council's Hackney Carriage and Private Hire Licensing Policy states that Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It was accepted that offences could be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally.

By attaining seven or more penalty points on their DVLA licence a driver was demonstrating they may not be fit and proper and the authority should assess their suitability. It was suggested part of the assessment was to undertake a driver awareness course and/or pass a driver assessment with no more than eight minor infringements, within four months of notice from the authority they were considering the suitability of the licence holder. Failure to do so would strongly suggested the driver was not fit and proper and not be licensed until a period of 12 month had passed with no further convictions and had passed a driver assessment since the last conviction, (4.54 of the Institute of Licensing Suitability Guidance).

In this instance the driver had incurred nine penalty points for speeding within a short period of time which was not a single occurrence, and the Licensing Authority

believed the number of points accrued indicated a propensity to drive in this manner. Moreover, these points had accumulated following the driver's attendance at an educational speed awareness course. It was held that the accumulation of these penalty points indicates that the driver did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally. The miles per hour (MPH) over the speed limit was significant and had been a consideration.

Whilst the Licensing Authority was not considering the grant of a new licence in this instance, Members also noted that within Appendix H (18) (I) of the Council's Hackney Carriage and Private Hire Licensing Policy where a new driver applicant had seven or more points on their DVLA licence for minor traffic or similar offences, a licence would not be granted until at least five years had elapsed since the completion of any sentence imposed. This set the expectation and gravitas pertaining to the propensity to speed in motor vehicles used prior to a licence having been granted, and now the Licensing Authority was determining a situation after the grant of a licence and relevant to the standard of fitness of a licensed hackney carriage and private hire driver.

We had to consider if the fact they had not disclosed the penalty points was a dishonest act with intent or that it was simply an oversight due to lack of understanding/knowledge of the policy and didn't receive the newsletter dated 8 February 2024 reminding drivers of their obligation to notify North Devon Council within 48 hours of receipt of any fixed penalty.

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) would result in a licence being refused, or if already granted, revoked and may result in prosecution. North Devon District Council's Hackney Carriage and Private Hire Licensing Policy Appendix H section 12 (December 2023) (4.23 of the Institute of Licensing Suitability Guidance).

If not believed to be an intentional dishonest act then it may be considered to be a negligent act and question the driver's suitability. In these circumstances a suspension of the licence for a period of time may be deemed to be a suitable sanction. Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 stated that a district council may suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle where he has been convicted of an offence under or has failed to comply with the provisions of the Town Police Causes Act 1847 or the 1976 Act or for 'any other reasonable cause'.

There were concerns namely the Licensing Authority was not satisfied that any attempts had been made to notify them of the subsequent speeding offences which was considered to be an intentional and deliberate act. This alongside the associated speeding offences was considered relevant and serious enough to justify the suspension of the current hackney carriage and private hire driver's licences for a period of 14 days.

RESOLVED:

- (a) That the hackney carriage and private hire drivers licence be suspended, with immediate effect, for a period of 14 days; and
- (b) That the driver undertakes an awareness course and/or passes a driver assessment, with no more than eight minor infringements, within four months of today's notice of decision.

7. DISCIPLINARY HEARING OF A PRIVATE HIRE LICENSED DRIVER – (REF NB009/24)

Also present: the Driver, his Witness and Councillor Lethaby, Observer.

The Chair explained Councillor Lethaby's presence and sought confirmation the Driver was happy for him to remain in the room. The Driver confirmed he was happy for Councillor Lethaby to remain.

The Chair introduced himself and invited those present to introduce themselves. He confirmed he had been appointed the Chair for this hearing and confirmed that items 2 to 6 on the agenda had been dealt with.

The Chair asked the Licensing Officer to confirm if all requirements had been met for the application. The Licensing Officer confirmed they had.

The Chair then invited the Legal Officer to explain the hearing process.

The Legal Officer explained that the Licensing Officer would begin by presenting his report followed by questions from the Sub-Committee. The Chair would then request the Driver to present his case followed by questions from the Sub-Committee, the Chair would then ask the Driver's witness to present his case followed by questions from the Sub-Committee. The Licensing Officer would then sum up followed by the Driver. The Sub-Committee would then retire to seek legal advice to formulate its decision. Once a proposed decision had been reached, the meeting would reconvene and the clerk would read out the proposed decision whereby Members of the Sub-Committee would vote. A printed copy of the decision notice would be given to the Driver and the meeting would then conclude.

The Driver confirmed he understood the process.

The Licensing Officer highlighted the following:

- The Driver currently held a Hackney Carriage and Private Hire drivers licence which had first been granted in January 2019.
- This had been renewed for a further three years in January 2022 with the next renewal due in January 2025.
- During the grant of his licence the Driver had declared receiving three penalty points on his licence in February 2016.
- Section 13.3 of the North Devon District Council's Hackney Carriage and Private Hire Policy required a licensed driver to notify the Licensing Authority within 48 hours of any motoring offence.

- A newsletter was sent out to licenced drivers in February 2024 reminding them of the requirement to disclose offences within 48 hours, this could be seen at Appendix B of the agenda report.
- During a DVLA licence check carried out by the Licensing Authority in October 2024 it was discovered that his licence had nine penalty points over three separate offences of speeding on a public road in a 30 mph zone.
- The Driver attended an interview at Brynsworthy Environment Centre in accordance with the Police and Criminal Evidence Act 1984 (PACE) in relation to the driving licence endorsements and the failure to notify the Council of these endorsements.
- The Driver had undertaken a speed awareness course.

The Chair expressed his concern over the notification or lack of it to drivers of the need for them to notify the Council of offences and asked if this process could be reviewed by officers.

The Driver presented his case. He was very apologetic for having exceeded the speed limit and for not notifying the Council of his penalty points. He accepted that he was responsible for notification to the Council of any issues with his driver's licence and fully accepted he was at fault for not having done so. He had had to deal with a house move as his landlord decided to give him notice to vacate. The housing market for private rentals was particularly challenging and although he did not want to use that as an excuse it had caused stress. He was now fully aware of his obligations and what to do if needed to in the future. This job was his only source of income.

In response to questions he gave the following replies:

- If he had to choose which offence was more serious the speeding or the non-disclosure of the offence he would say they were equally serious.
- If he hadn't been speeding there would have been no need to disclose so he felt the speeding was the more serious offence of the two.
- He was only doing about 5 miles an hour over the limit. He had been caught by mobile cameras at Sticklepath Hill on one occasion.
- He now observes signs and allows extra time in between jobs.
- He felt the traits required to be a driver included being courteous, honest, trustworthy and honest.
- He now had his own email address which had been passed onto the Licensing team for future newsletter updates.

The Driver's witness was asked to give his case. He advised the Sub-Committee he had discussed what to do in the case of a driver having accrued points on his licence with a Licensing officer at the Council who had advised him it would need to go to a Sub-Committee. The need to notify had escaped him and been forgotten about. The house move had been a particularly stressful time and having been told in the May they had to be out by June. He was the boss, taxi firm owner, and was his responsibility to advise his drivers of what to do.

The Sub-Committee asked the witness questions and the following replies were given:

- He had 5-6 drivers and knew to inform them of their obligations.
- He must have missed the requirement to notify of 3 points he thought it was if 6 penalty points were accrued that he had to notify the Council.
- He admitted this was an oversight on his part.

The Licensing Officer summed by saying in addition he had failed to mention in his report that the Driver and Father-in-law (witness) had had a house move to contend with as it was mentioned at the PACE interview. Although the speeding was not too far over 30mph the limit was a maximum not a threshold. Two of the offences happened within days of each other, and any further points accrued would mean he would lose his DVLA licence and his school contract. The Licensing officer could not prove whether the driver was being dishonest or if it just had been an oversight.

In his summing up the Driver stated he accepted full responsibility for his actions and realised how serious this was. He had not long been a taxi driver and although did not want that to be an excuse he was trying his best to do a good job and would now do better.

RESOLVED that everyone be excluded from the meeting with the exception of the Members, Legal Officer, 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.

That it being 12:35 everyone be readmitted to the meeting.

The Chair asked the clerk to read out the proposed decision, along with the reasons for the proposed decision which was agreed and voted upon as follows:

- 1) Suspension of a Hackney Carriage/Private Hire Driver's licence with immediate effect for a period of 14 days; and
- 2) To undertake a driver awareness course and/or pass a driver assessment, with no more than eight minor infringements within four months of the decision notice.

The reasons for this were:

The Licensing Authority has determined, with the high responsibility that the Licensing Authority has in respect to the protection of the public that you are not operating appropriately as a fit and proper person for the above licences for the following reasons, pursuant to section (61) (1) and (2B) of the Local Government (Miscellaneous Provisions) Act 1976, and Appendix H (18) (i) (I) and Section 4.12 of the Council's Hackney Carriage and Private Hire Licensing Policy dated December 2023, and the information that Members have heard today. A temporary suspension of Licence is proportionate to reflect this for 14 days and to undertake a driver awareness course and/or pass a driver assessment, with no more than eight minor infringements, within four months of this notice.

The reasons for this are:

- (c) There was no evidence of the Licensing Authority being notified of any of the three driving offences dated 22 October 2022, 17 April 2024 and 24 April 2024 in line with reporting requirements of the Council's Hackney Carriage and Private Hire Licensing Policy; and
- (d) Accumulation of nine DVLA penalty points for speeding offences within an eighteen month period between October 2022 and April 2024.

Appendix H (18) (i) of the Council's Hackney Carriage and Private Hire Licensing Policy stated that Hackney carriage and private hire drivers were professional drivers charged with the responsibility of carrying the public. It was accepted that offences could be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally.

In this instance, the driver had incurred nine penalty points for speeding within a short period of time, which was not a single occurrence, and the Licensing Authority believed the number of points accrued indicated a propensity to drive in this manner. Moreover, these points had accumulated following the driver's attendance at an educational speed awareness course. It was held that the accumulation of these penalty points indicated that the driver did not exhibit the behaviours of a safe road user and one that was suitable to drive professionally.

By attaining seven or more penalty points on their DVLA licence a driver was demonstrating they may not be fit and proper and the authority should assess their suitability. It was suggested part of the assessment was to undertake a driver awareness course and/or pass a driver assessment with no more than eight minor infringements, within four months of notice from the authority they were considering the suitability of the licence holder. Failure to do so would strongly suggest the driver was not fit and proper and not be licensed until a period of 12 month had passed with no further convictions and had passed a driver assessment since the last conviction, (4.54 of the Institute of Licensing Suitability Guidance).

Whilst the Licensing Authority was not considering the grant of a new licence in this instance, Members also noted that within Appendix H (18) (I) of the Council's Hackney Carriage and Private Hire Licensing Policy where a new driver applicant had seven or more points on their DVLA licence for minor traffic or similar offences, a licence would not be granted until at least five years had elapsed since the completion of any sentence imposed. This set the expectation and gravitas pertaining to the propensity to speed in motor vehicles used prior to a licence having been granted, and now the Licensing Authority was determining a situation after the grant of a licence and relevant to the standard of fitness of a licensed hackney carriage and private hire driver.

The Sub-Committee had to consider if the fact that non-disclosure of the penalty points was a dishonest act with intent or that it was simply an oversight due to lack of understanding/knowledge of the policy and had not received the newsletter dated 8 February 2024 reminding drivers of their obligation to notify North Devon Council within 48 hours of receipt of any fixed penalty. The Sub-Committee had taken into consideration the evidence of the witness, Mr Ellis, and the failure to supply that

newsletter information. The Sub-Committee requested that Mr Ellis be tasked with ensuring that his procedures were immediately addressed to ensure drivers were updated with essential information. In addition, it was noted by the Sub-Committee that there had been house-moving upheaval, which had created personal issues for the Driver.

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) would result in a licence being refused, or if already granted, revoked and may result in prosecution. North Devon District Council's Hackney Carriage and Private Hire Licensing Policy Appendix H section 12 (December 2023) (4.23 of the Institute of Licensing Suitability Guidance).

If not believed to be an intentional dishonest act then it may be considered to be a negligent act and question the driver's suitability. In these circumstances a suspension of the licence for a period of time may be deemed to be a suitable sanction. Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 states that a district council may suspend, revoke or refuse to renew the licence of a driver of a Hackney Carriage or Private Hire vehicle where he has been convicted of an offence under or has failed to comply with the provisions of the Town Police Causes Act 1847 or the 1976 Act or for 'any other reasonable cause'.

There were concerns namely the Licensing Authority was not satisfied that any attempts had been made to notify them of the subsequent speeding offences which was considered to be an intentional and deliberate act. This alongside the associated speeding offences was considered relevant and serious enough to justify the suspension of the current hackney carriage and private hire driver's licences for a period of 14 days and to undertake a driver awareness course and/or pass a driver assessment, with no more than eight minor infringements, within four months of the decision notice.

RESOLVED:

- (c) That the hackney carriage and private hire drivers licence be suspended, with immediate effect, for a period of 14 days; and
- (d) That the driver undertakes an awareness course and/or passes a driver assessment, with no more than eight minor infringements, within four months of today's notice of decision.

Chair

The meeting ended at 12.45 pm

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