

LICENSING SUB-COMMITTEE
30 JULY 2018

Minutes of the meeting of the Licensing Sub-Committee of Flintshire County Council held in the Delyn Committee Room, County Hall, Mold CH7 6NA on Monday, 30 July 2018

PRESENT: Councillor Tony Sharps (Chairman)

Councillors: Mike Reece and Ralph Small

OFFICERS OF FLINTSHIRE COUNTY COUNCIL:

Solicitor, Licensing Team Leader, and Committee Officer

Applicant

1. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None were received.

2. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - TO CONSIDER THE EXCLUSION OF THE PRESS AND PUBLIC

RESOLVED:

That the press and public be excluded from the meeting for the following items as they were considered to contain exempt information by virtue of paragraphs 12 and 13 of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended).

The Chair welcomed the applicant and introduced the Members of the Sub-Committee and the Council's officers. He explained the procedure for the hearing, including how the application would be determined.

3. APPLICATION FOR A PRIVATE HIRE / HACKNEY CARRIAGE (JOINT) DRIVER LICENCE

The Licensing Team Leader presented the report to consider an application for a Private Hire/Hackney Carriage (Joint) Driver Licence, licensed by the Authority.

The Licensing Team Leader explained that the application asked for details of any occasion on which the applicant had been cautioned or convicted of any offences and the applicant had disclosed three driving offences. However, on receipt of the applicant's DVLA data a disqualification period of 18 months was recorded in relation to a dangerous driving offence and this disqualification period had not been disclosed by the applicant.

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The Licensing Team Leader advised that the applicant's enhanced disclosure and barring service criminal record check showed a conviction in March 2018 for possession of a controlled drug. The applicant was asked to provide a written explanation of his conviction and this was appended to the report.

Due to the nature of his convictions the applicant was invited to appear before the Licensing Sub Committee to determine whether he was a fit and proper person to hold a Joint Driver Licence.

The Chairman invited the applicant to give a full explanation of his convictions as detailed on his DVLA report and Disclosure and Barring Service (DBS) criminal record disclosure.

The applicant referred to his conviction for dangerous driving and explained that he had been the victim of identity theft. He said he had not been driving the vehicle at the time the offence was committed and the vehicle had been taken without his permission. The applicant said this was one of the reasons why he had subsequently changed his name. The applicant continued that he had not disclosed the information on his application form because he assumed, as he was not responsible for the offence, it was not shown on his records. He said he was not aware it was on his records until his arrest in September 2017 for a further offence.

The applicant referred to the written explanation which was appended to the report to address his recent conviction for possession of a controlled drug. He explained that he had admitted possession as the substance had been found in his van, however, it did not belong to him and was not for his personal use. The Solicitor questioned the applicant in detail around the circumstances in which the substance had been found and asked why the vehicle had been stopped and searched by North Wales Police. The applicant provided background information and explained he had given a lift home to a friend in his van and therefore assumed that the substance belonged to his friend and had been left in his van by mistake. The applicant said he was tested for drug use at the time of the offence and the results had shown he had not taken drugs. The Solicitor asked the applicant to explain why he had pleaded guilty to the offence if he understood the illegal substance had belonged to and been left in the van by his friend.

The Chairman asked the applicant to provide information on his employment history and current circumstances. The applicant provided details of his previous and current employment and his future ambitions.

The Chairman invited members of the Panel to raise further questions.

The applicant was asked if he understood the severity of his conviction for possession of a controlled drug and why he had not provided a full explanation of his passenger's circumstances or details of the passenger in his van to North Wales Police on his arrest. The applicant responded that as the substance had been found in his possession and in his van then he was guilty in law.

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The Solicitor questioned the applicant in detail concerning his conviction for dangerous driving and asked him why he had not disclosed the disqualification period on his application. The applicant said he believed that as the North Wales Police were aware he was a victim of mistaken identity and he was not guilty of the offence it would be removed from his records. The Solicitor asked the applicant if he could provide any evidence to show that he had sought to clear his name and have the conviction removed from his record. The applicant reiterated that he was not aware the conviction was on his record until his arrest in September 2017 for a further offence. The Solicitor advised the applicant that it was a straight forward process to seek to re-open a court case and asked the applicant if he had sought legal advice regarding this. The applicant responded that he had informed North Wales Police and the Court that he was the victim of mistaken identity and had sought advice but had not been informed of how he could have the conviction removed from his records.

The Solicitor referred to the court summons which had been served on the applicant for his conviction of dangerous driving in 2014 and asked the applicant to outline the circumstances which had given rise to the offence. The applicant said he had not received the documents regarding the summons and was therefore unaware of the details of the conviction. The Solicitor asked the applicant to explain when he had changed his name and to expand on his reasons for doing so. The applicant responded that he had changed his name for personal reasons and for use of social media.

The Licensing Team Leader referred to a previous application by the applicant for a Private Hire/Hackney Carriage (Joint) Driver Licence which had identified a conviction which the applicant had also said was due to mistaken identity.

The Solicitor questioned the applicant in further detail on his conviction for possession of a controlled drug and asked what quantity of the illegal substance was found in the van at the time of the arrest. The Solicitor asked the applicant if he was a current user of controlled drugs or had used controlled drugs in the past. The applicant said he had used controlled drugs in the past but could not specifically remember the last time. The Solicitor asked the applicant if he could confirm when he had last used a controlled drug or give an indication of when that had happened. The applicant said that he could not remember when he had used a controlled drug but it may have been around 3 years ago. The applicant said he was not a user of controlled drugs and he smoked cigarettes. When the applicant was asked again by the Solicitor to confirm when he had last used a controlled drug the applicant stated he could not remember and said that "if you cannot tell the truth you just say that you are not too sure". The Solicitor asked the applicant what his views were on the use of and transporting of drugs. The Solicitor emphasised that should the applicant be granted a licence he would be dealing with members of the public and children.

The Chairman asked the applicant why he wished to have a Private Hire/Hackney Carriage (Joint) Driver Licence. The applicant said he was currently employed but wished to increase his working hours and income.

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When the Chairman was satisfied that all relevant questions had been raised, he requested that the applicant and the Licensing Team Leader leave the meeting whilst the application was determined.

3.1 Determination of the Application

In determining the application, the Panel considered the Council's guidance (Flintshire County Council's Guidance on the Treatment of Convictions, Cautions, Criminal Charges or other recorded sanctions) which was appended to the report. The Panel paid particular attention to paragraph 4.13 which related to drug offences. The Panel were greatly concerned about the applicant's inconsistent accounts of his convictions including the dangerous driving conviction and the recent conviction for possession of a controlled drug and his failure to confirm when he had last used a controlled drug despite being asked repeatedly to give just a rough approximation of when that was. The Panel considered that the applicant was not being sincere about the actual circumstances that led to his conviction for possession of a controlled drug and were concerned when he stated that "if you cannot tell the truth you just say that you are not too sure".

The Panel were very mindful of the overarching duty to protect the public and took the view that on balance the protection of the public would be undermined if he had a licence.

The Licensing Team Leader and the applicant were invited to return so that the meeting could be reconvened.

3.2 Decision

The Chairman advised that the Panel had considered all the representations made including the applicant's accounts of his offences. The Panel were very concerned about the applicant's explanations of his convictions and his failure to confirm when he had last used a controlled drug. The Panel considered that the applicant was not being sincere which was compounded by his statement "if you cannot tell the truth just say you are not too sure". The Chairman advised that the Panel had an overarching duty to protect the public and with that in mind concluded that the applicant was not a fit and proper person to hold a private hire/hackney carriage (joint) driver licence and therefore the application was refused.

The Chairman advised the applicant that he had 21 days to appeal against the decision.

RESOLVED:

That the application be refused as the applicant was not considered to be a fit and proper person to hold a Private Hire/Hackney Carriage (Joint) Driver Licence under the Local Government (Miscellaneous Provisions) Act 1976.

(The meeting started at 10.00 am and ended at 11.25 am)

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