

LICENSING SUB-COMMITTEE
17 JANUARY 2019

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 Thursday, 17 January 2019

PRESENT: Councillor Tony Sharps (Chairman)
Councillors: David Cox and Mike Reece

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 officers. The Chairman asked the applicant if he wished the hearing to be deferred so that he could be assisted with the services of an interpreter. The applicant said he did not require an interpreter and confirmed he was able to hear and understand the proceedings. The Chairman 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 had asked for details of any previous convictions, however, the applicant had not completed this section of the application form. On receipt of the applicant's Disclosure and Barring Service (DBS) enhanced criminal records disclosure a conviction for battery was shown. Details of the conviction were appended to the report. The

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applicant was asked to provide written explanation of the conviction and also his failure to complete section 5 of the application form. The applicant's response was attached as appendix C to the report. 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 previous conviction as detailed on the Disclosure and Barring Service (DBS) enhanced criminal records disclosure.

The applicant referred to his written explanation to address his conviction and provided background information of how the offence had been committed. He responded to the questions raised concerning how long he had lived in the United Kingdom, his personal and family circumstances, and his employment background.

The Solicitor questioned the applicant in detail concerning his conviction for battery and failure to disclose it on section 5 of the application form. The applicant said he was ashamed of his offence but did not believe he was guilty and explained it was out of character and had occurred at a time during a domestic dispute. He reiterated the circumstances which had provoked it and said despite the conviction he continued to have a stable family life. The applicant explained that he had made a mistake in not providing details of his conviction on the form but held the view that he was not a criminal.

Prior to further questioning the Solicitor asked the applicant if he fully understood the questions being raised and the proceedings of the hearing and if he required the services of an interpreter. The applicant responded that he could hear and understand and confirmed that he did not require assistance from an interpreter.

The Solicitor questioned the applicant regarding section 7 of the application form which asked for references and asked why he had not provided details of his last employer as a referee. The Solicitor also referred to section 4 which asked for employment details and also an explanation for the reason for leaving. The Solicitor questioned the applicant in detail regarding his previous employment and his reason for leaving. The applicant explained that he had been dismissed by his last employer and detailed the circumstances which had led to his dismissal. At this point, the applicant provided written information which provided details of his conviction for assault against another employee which had taken place at his place of work. The applicant also disclosed that he had recently attended court and had received a fine and a suspended sentence, and had been cautioned that if he committed a further criminal offence he would receive a prison sentence. The applicant circulated a letter to the Panel which provided details of the offence.

The Solicitor questioned the applicant in further detail concerning his recent conviction for assault and the circumstances which had given rise to it. The applicant said that he was innocent of the charge and had been the victim of aggressive behaviour towards him by another employee. The applicant said he

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had sought legal advice and would appeal against his sentence and explained that there was a CCTV recording of the incident which provided evidence that he had not committed assault.

The Solicitor asked the applicant if he had mounted a claim for unfair dismissal with an employment tribunal. The Solicitor also asked the applicant why he had stated on section 4 of his application form that his reason for leaving his employment was due to “unsuitable hours”.

The Solicitor asked the applicant to consider how he would address the issue of challenging and confrontational behaviour by customers in his vehicle if his application for a licence was successful. The applicant said he was not a violent or aggressive person by nature and had a stable family life. He said he had been provoked in both cases but he was not guilty of assault.

A member of the Panel asked the applicant if there was any connection between the previous conviction for domestic related violence and the recent conviction for assault. The applicant stated there was not and said they were both isolated incidents.

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 Sub Committee considered 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 4.18 which related to violence. The Panel were very concerned about the applicant’s inconsistent accounts of his recent conviction for assault. The Panel were also concerned about his failure to disclose his earlier conviction for battery on section 5 of his application, and failure to disclose dismissal from employment on section 4 of the form as the reason for leaving his employment.

The Panel were 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 the applicant was granted 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 the applicant that the Sub-Committee had carefully considered all the representations made, including the accounts of his offences and the additional information provided at the meeting concerning a further recent conviction for a violence (that also resulted in his dismissal at a previous employment due to the offence occurring whilst on work premises during working

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time against a former work colleague) related offence that the Sub-Committee were not aware of prior to this hearing. The Panel were very concerned about the applicant's explanations of his convictions including, whilst it was noted the applicant planned to appeal to the Crown Court against that particular conviction, the very recent conviction received on the week of this hearing. 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 explained to the applicant that he is entitled to make a fresh application at any time especially relevant if there was any material change in his circumstances such as successful appeal regarding conviction. However that is not to suggest that any subsequent application would be successful (or unsuccessful), simply that it would be considered again by the Sub-Committee. 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 hearing commenced at 2.00 pm and ended at 3.30 pm)

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HEARING TWO

PRESENT: Councillor Tony Sharps (Chairman)

Councillors: David Cox and Mike Reece

OFFICERS OF FLINTSHIRE COUNTY COUNCIL:

Solicitor, Licensing Team Leader, and Committee Officer

Applicant

Prior to the start of the meeting the Licensing Team Leader explained that the applicant had asked that his current employer be present at the meeting. The applicant confirmed that he wished his employer to be present during the hearing and asked that he be allowed to speak on his behalf if necessary.

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

4. 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 had asked for details of any previous convictions, however, the applicant had not completed this section of the form. On receipt of the applicant's Disclosure and Barring Service (DBS) enhanced criminal records disclosure a conviction was shown. Full details of the conviction was appended to the report. The applicant was asked to provide a written explanation of the conviction and his failure to complete section 5 of the application and this was also appended to the report. 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 asked the applicant to explain the circumstances of his conviction as detailed in the report. The applicant explained that he had arrived in the United Kingdom in 2005 and provided details of his personal circumstances at that time and his urgent need to find paid employment. He said he had been provided with a registration card through a contact who dealt with these matters which had enabled him to find work. However, following a visit and enquiries by immigration officials at his place of employment it had come to light that his registration card was illegal and he was subsequently convicted of using an altered registration card with intent to deceive.

The Solicitor questioned the applicant about his employment history and asked him to explain why he had not disclosed his conviction on his application. The applicant explained he had not known that the registration card was fake. He said he had mistakenly thought that he did not need to declare his conviction as it

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had been committed in 2009 and he was also uncertain if it was relevant to his application in terms of a criminal offence. The Solicitor sought further information from the applicant concerning how he had found employment following his conviction. The applicant explained that whilst being imprisoned he had made an application, with assistance from immigration officials, for a new registration card which was later issued and this had enabled him to secure further employment.

When asked by the Solicitor, the applicant said that he regarded himself as a fit and proper person to hold a licence. He said he was honest and hard working and, when prompted by the Interested Party, provided an example of how he had recently found a wallet containing cash and cards and had taken it to a police station. He said he wanted to work to support himself. He gave assurance to the Panel that he did not have any previous convictions to declare from when he had lived in his birth country. The Interested Party spoke in support of the applicant and said he had found him to be hard working, of honest character, courteous and helpful to his customers.

When the Chairman was satisfied that all relevant questions had been raised, the Licensing Team Leader, the applicant, and Interested Party, were asked to leave the meeting whilst the application was determined.

4.1 Determination of the Application

Following consideration of the application the Sub Committee was of the view that the applicant was a fit and proper person within the meaning of the Local Government (Miscellaneous Provisions) Act 1976 to hold a Private Hire/Hackney Carriage (Joint) Driver Licence.

In determining the application, the Sub Committee considered the Council's guidance on the treatment of convictions, cautions, or criminal charges, which was appended to the report. The Panel paid particular attention to paragraph 4.21 which related to dishonesty. The Panel considered the circumstances involved and the length of time since the conviction and felt that the applicant had given a full and credible account of his actions. The Panel agreed that the applicant was a fit and proper person to hold a Private Hire/Hackney Carriage (Joint) Driver Licence.

The Licensing Team Leader, the applicant and the interested party were invited to return and the meeting was reconvened.

4.2 Decision

The Chairman advised the applicant that the Sub Committee had decided that he had given a full and credible account of his actions and his previous conviction and had agreed to grant the application.

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RESOLVED:

That the applicant was a fit and proper person to hold a Private Hire/Hackney Carriage (Joint) Driver Licence under the Local Government (Miscellaneous Provisions) Act 1976 and that the Licence be granted.

(The second hearing commenced at 3.30 p.m. and ended at 4.10 p.m)

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