

LICENSING SUB-COMMITTEE

27 JULY 2023

Minutes of the meeting of the Licensing Sub-Committee of Flintshire County Council held remotely on Thursday, 27 July 2023

Present: Councillor Rosetta Dolphin (Chair)

Councillors: Glyn Banks and Geoff Collett

Officers of Flintshire County Council:

Solicitor, Licensing Team Manager and Democratic Services Officer

Applicant

Interpreter

APOLOGIES:

None

1. DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)

None were received.

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

RESOLVED:

That the press and public be excluded from the meeting for the following item as this was 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).

3. HEARING AND DETERMINATION OF THE APPLICATION

The Chair welcomed the Applicant and Interpreter and introduced the panel members.

4. CONDUCT OF A PRIVATE HIRE/HACKNEY CARRIAGE (JOINT) DRIVER

The Chair referred to the report which was to consider an application for a Private Hire / Hackney Carriage (Joint) Driver Licence. The Licensing Sub Committee was asked to consider whether 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 with this Authority.

The Chair confirmed that the Applicant had the support of a Translator who would be translating throughout the hearing.

The Licensing Team Manager reported that the Applicant had applied for a Private Hire / Hackney Carriage (Joint) Driver Licence which was shown at Appendix A.

The Licensing Team Manager read out sections 1.02 to 1.20 of the report which included the following information:-

The Applicant disclosed that he had 6 points on his DVLA driving licence.

The Applicant had ticked no in response to the question on whether an applicant had ever been convicted, received a caution or fixed penalty notice for any offence other than motoring offences.

The declaration on the application form was signed by the Applicant in section 9. The declaration asked the Applicant to read the section carefully and to only sign if they understood it and accepted each of the statements.

Upon receipt of the Applicant's DVLA fee paying enquiry, 6 points for an MS90 offence (failure to give information regarding identity of driver) were shown. The DVLA document was shown at Appendix B.

A written explanation was requested regarding the MS90 offence and the subsequent points. This was received in the form of an email sent by a relative of the Applicant, and was shown at Appendix C

On receipt of the Applicant's Disclosure and Barring Service Enhanced Criminal Record Check, made as a part of his application for a Joint Driver Licence, one conviction with two separate offences was shown from 2022. Further details were shown at Appendix D.

A further written explanation was provided alongside the DBS, yet this did not address the reason for his failure to disclose this conviction on his application form. The second explanation was shown at Appendix E.

Flintshire County Council had adopted guidance on the treatment of convictions, cautions and other recorded sanctions. This was shown at Appendix F.

Reference was also made to Paragraph 2.2 of the above guidance which stated that 'under the provisions of Sections 51 and 59, Local Government (Miscellaneous Provisions) Act 1976, the Licensing Authority was required to ensure that an applicant for the grant or renewal of a Hackney Carriage / Private Hire driver's licence was a fit and proper person to hold such a licence.

Paragraph 4.1 referred to how convictions, breaches of condition and alleged offences were addressed within paragraph 4.3 referring to major driving offences.

Reference was also made to paragraph 4.21 which referred to dishonesty and although the licensing authority accepted that there had been no conviction

for dishonesty, the false declaration on the application form may be considered a dishonest action. Paragraph 4.18 referred to violence.

Consideration also had to be given to the Department for Transport (DfT) Statutory Taxi & Private Hire Vehicle Standards and paragraphs 5.12 to 5.14 of the DfT Standards address the fit and proper person test.

The Licensing Sub Committee were asked to consider whether they felt 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 with this Authority.

The Chair invited the Panel to ask questions

The Applicant was asked if he had fully understood the paperwork with particular the questions within the application. The Applicant replied that he did not but that he had someone to help him but that person did not fully understand everything.

The Chair referred to the MS90 (failure to give information regarding identity of driver) offence and asked if the Applicant understood what the underlying offence related to. The Applicant said it was in relation to a speeding fine. The Chair referred to the convictions for Battery and Common Assault and sought clarification as to why this was not disclosed in the paperwork.

The Solicitor explained that he was the legal advisor to the members of the Sub Committee and would ask some questions to ensure all information was present for the Committee to make a decision and allow the Applicant to expand on his explanations.

With regard to the Assault and Battery convictions and the emailed explanation provided, he asked who the person was that had provided the explanation and had he been fully informed with regard to what had happened. The Applicant confirmed that it was his Nephew who had written it and that he had explained everything that happened to him and asked him to write it down.

The Applicant confirmed the incident took place in Chester and that he was working as an Uber Eats Driver collecting his order. The Applicant confirmed that he had parked on the double yellow lines but said he understood that he was allowed to do so for 5 minutes. He said that other Uber Eats drivers parked there so he did not think it was an issue and that it was not possible to park outside most of the restaurants without the risk of a fine. The Solicitor asked if Uber Eats had provided guidance to drivers on where they should park. The Applicant confirmed they had but that it was not practical to comply with this guidance as the customer would complain about the quality of service. The Solicitor asked if the Applicant in fact accepted that his parking was not in accordance with the rules. The Applicant accepted this but said that sometimes they were given no choice due to the demands of the job.

The Applicant confirmed that the incident involved a Traffic Warden. The Solicitor questioned the Applicant about his explanation that the Traffic Warden's behaviour had led to the incident and asked the Applicant if he had raised a complaint about the Traffic Warden's alleged conduct. The Applicant confirmed

that he had not and said that this was because of the language barrier and he would need to hire the services of an interpreter to make a complaint. He also said was also aware that he had parked on double yellow lines so did not consider there was grounds to challenge the parking ticket.

Referring to the written explanation, the Solicitor commented that it did not go into details as to what happened to lead to the Applicant being charged with Assault and Battery. The Applicant said that he was inside the shop waiting for his order. He kept looking out of the window but the lady asked him to go to the back of the shop to collect the order and it was then that he saw that the Traffic Warden had issued the ticket. When he saw how much he would have to pay he was upset because it was only 30 seconds and the £2.80 fee that he was receiving was not worth the ticket penalty. He tried to explain to the Traffic Warden which was when he was accused of swearing. The Police had not attended but had arrested him an hour later when he was out delivering.

The Solicitor asked the Applicant if he had attended court and whether he had pleaded guilty to the charges. The Applicant confirmed he attended and apologised to the Judge for parking on the double yellow lines and had paid the penalty. He said he had not pleaded guilty to the Assault and Battery charges but was found guilty by the Judge. He maintained that he had not touched the Traffic Warden and not done anything wrong when asked by the Chair about the incident.

The Solicitor sought to clarify with the Applicant whether he had failed to disclose the conviction because he did not believe he had done anything wrong or because he did not understand the question on the application form. The Applicant said that he did not understand the question correctly and he also did not think the incident with the traffic warden would be on his DBS as he had not touched him.

The Solicitor asked if the Applicant had asked for clarification from the Licencing Team as to what the question meant. The Applicant confirmed that he had not.

The Solicitor asked the Applicant having reflected on what had happened whether he still maintained that he had done nothing wrong, and if was remorseful. The Applicant said that he only admitted to parking on the double yellow lines and that the video shown in court from the CCTV footage clearly indicated that he had not touched the man. The Solicitor informed the Applicant that the panel could have regard to his explanations but could not look behind the fact of the conviction as presented on the forms.

The Applicant was given the opportunity to ask questions.

The Applicant apologised if some of the information was missing on his application form and said that whilst working for Uber Eats there were risks of losing his licence because of the nature of the work. Applying for a taxi licence would enable him to get a better, safer job to help support his family. He said that he was up to date with all other documentation relating to the application the only thing missing was the taxi licence.

The Solicitor asked if he still worked for Uber Eats. The Applicant confirmed that he did not as he was waiting for the taxi licence. The Chair asked the Applicant if he no longer worked for Uber Eats because of the Charges. The Applicant confirmed that it was not related to that but he did not wish to risk getting more points on his licence.

A question was asked concerning the Assault and Battery Convictions and the Applicant was asked if the bodycam footage from the Officer was presented in Court. The member pointed out that Battery must involve some physical contact. The Applicant confirmed that the footage was played in Court and had shown that he had not touched him which was why he was only issued with a penalty notice.

A question was asked for clarity on what the MS90 driving offence was for. The Solicitor confirmed the MS90 code related to an offence where a registered keeper of a vehicle failed to give the name of the person who was driving the vehicle on a given date and the Chair asked the Solicitor to ask the Applicant more about this offence.

The Applicant said that his car was sold and then a couple of days later the person returned the car to him. During this period, the speeding offence was committed but he did not know who was driving the car. He had failed to provide the DVLA of the name of the person who was driving the car and had failed to notify them that he had moved address which was why he lost 6 points. He said it had turned out it was him who was driving the car and that if he had replied to the letters on time, he would have only been issued 3 points.

A question was raised on the Applicant's place of birth. The Applicant confirmed he was born in Germany but his mother went home and registered the birth in Romania.

A question was raised regarding the two References. The Licensing Team Leader said that these were character references and that employer references may be seen as better but were not a requirement. One was from a mechanic (an associate and friend) and the other from a friend but neither were related to the Applicant. Both say he was suitable, honest and dependable. It was reported that the Applicant's right to work in this country expired in December 2025. The Applicant was asked if he intended to renew this to which he responded yes most definitely.

The Licensing Team Leader, Applicant and Translator were moved into the lobby to enable the Panel to determine the application.

4.1 Determination of the Application

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

The Chair advised that the members of the Sub-Committee had regard to all the information including the details of convictions, the Council's policy on convictions and the statutory guidance as well as the explanations given by the Applicant.

The Sub-Committee had regard to the conviction for common assault and battery from April 2022 and was content that it was relevant and fell clearly within the scope of the Council's guidance on convictions. The Sub-Committee determined that they had no good reason to depart from the guidance which stated that the Council was not likely to grant a licence to an applicant unless they were at least 5 years free of a such a conviction.

The Sub Committee had regard to the explanations given by the Applicant but did not feel that the Applicant demonstrated remorse for the conviction and did not consider that disagreeing with what had happened properly explained why he had failed to disclose this conviction. The Sub Committee noted that if the Applicant was unsure as to what he had to disclose he did not make any enquiries so were not satisfied with the explanation. The Sub Committee also had regard to the driving offence in December 2022 which related to failing to provide driver details.

The Sub-Committee was not satisfied on the balance of probability that the Applicant was a fit and proper person under the Local Government (Miscellaneous Provisions) Act 1976 to hold a Hackney Carriage and Private Hire Driver's Licence. It was unanimously resolved that the application be refused

4.2 Decision

The Chair read out the decision of the Sub-Committee (as above) and before closing the meeting advised the Applicant that he had the right of appeal against the decision and that the decision would be issued to him in writing.

RESOLVED:

That the application be refused as the Sub Committee was not satisfied the Applicant was a fit and proper person to hold a Hackney Carriage and Private Hire Driver's Licence within the meaning of the Local Government (Miscellaneous Provisions) Act 1976.

(The meeting started at 10.00 am and ended at 12.04 pm)

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Chairman