

LICENSING AND REGULATORY SUB-COMMITTEE

TUESDAY, 5 MARCH 2024

Present:

Councillors Gearon, Henderson and Rollason

Officers in Attendance:

Licensing Manager

Legal Assistant

Licensing Assistant

53. APOLOGIES

None.

54. ELECTION OF CHAIR

It was proposed by Cllr Gearon and seconded by Cllr Henderson and;

RESOLVED – that Cllr Rollason be elected chair for the duration of the meeting.

55. DECLARATIONS OF INTEREST (IF ANY)

None.

56. MINUTES

The Minutes of the meeting of the 18 January 2024 were unanimously approved as a correct record and signed by the Chair.

57. REQUEST FOR HACKNEY CARRIAGE VEHICLE EXTENSION FOR FURTHER 12 MONTHS - FJ63 ZSZ

The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in March 2025, with one advisory and that the vehicle passed its annual tax inspection test on 28 February 2024 with advisories. The Applicant was not in attendance but provided a written statement in support of the application.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the Hackney Carriage Vehicle Licence Extension as detailed in the report with the additional condition of 6 monthly taxi inspection tests due to the age of the vehicle and to monitor the advisories listed.

58. REQUEST FOR HACKNEY CARRIAGE VEHICLE OVER 5 YEARS - DX18 PVJ

The Applicant was not in attendance. The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in February 2025, with no advisories and that the vehicle passed its annual taxi inspection test with no advisories.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the new Hackney Carriage Vehicle Licence as detailed in the report with no additional conditions.

59. REQUEST FOR HACKNEY CARRIAGE VEHICLE EXTENSION FOR FURTHER 12 MONTHS - OV62 YPG

The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in February 2025, with no advisories and that the vehicle passed its annual taxi inspection test on 28 February 2024 with no advisories. The Applicant was in attendance and clarified that the vehicle had recently had a new engine due to damage from flooding along with having the cosmetic issues fixed.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the Hackney Carriage Vehicle Licence Extension as detailed in the report with the additional condition of 6 monthly taxi inspection tests due to the age of the vehicle.

60. SMALL PLATE REQUEST - RK20 ZYJ

The Sub-Committee noted the information provided by way of the report and heard from the Applicant who was in attendance and clarified the reasons for wanting a small plate were because the applicant will be using the vehicle for weddings and business travel.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the request for a small plate as detailed in the report as they considered the resolution would be best suited to the applicant and the work he will be undertaking whilst also meeting the Council's licensing responsibilities.

61. REQUEST FOR PRIVATE HIRE VEHICLE LICENCE FOR VEHICLE OVER 5 YEARS - SB18 KGE

The Applicant was not in attendance. The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in July 2024, with a minor defect and 2 advisories and that the vehicle failed its annual taxi inspection test on 29 February 2024 and was booked in to have the issue repaired and retested.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the Private Hire Vehicle Licence as detailed in the report once the vehicle has passed its taxi inspection test and with the additional condition of 6 monthly taxi inspection tests due to the age of the vehicle and to monitor the listed advisories.

62. REVIEW OF A HACKNEY CARRIAGE PLATE - OY55 OUD

The Applicant was unable to be in attendance. The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in January 2025, with no advisories and that the vehicle does not have a current taxi inspection test.

The Sub-Committee heard from the Licensing Officer that the Applicant had missed its vehicle inspection in May 2023 and that the licence renewal given in September 2023, was on the condition that the 4 monthly vehicle inspections would be undertaken as set out in the Council's licencing policy. The vehicle has subsequently not been presented for testing and there was no certainty from the Applicant when it would be booked in for the vehicle test.

The Sub-Committee were not satisfied that the vehicle would continue to remain in a good and sound condition and believed that public safety could be compromised by the licence continuing.

Decision

Accordingly, after some deliberation, the Sub-Committee felt it had no choice but to revoke the Hackney Carriage Vehicle Licence as detailed in the report due to continued non-compliance of the conditions as set out in the Decision Notice dated 20 September 2023.

The Sub-Committee noted the personal circumstances of the Applicant and sympathised that they had been going through a difficult time but were extremely concerned that the vehicle checks that had been requested were being repeatedly missed. These checks are designed to ensure vehicles carrying members of the public remain in a good condition and good state of repair between each licence renewal.

The applicant has not complied with the condition to present the vehicle for testing every four months and there was no indication when the inspections would be undertaken should the licence continue. The Sub-Committee noted that at the Sub-Committee in September 2023 the Applicant's representative had apologised for missing the vehicle test in May 2023 and had given assurances that this would not happen again. Accordingly, the Sub-Committee did not feel confident that the vehicle would be presented for testing if the licence was to continue.

The Sub-Committee noted its overriding duty to the public, and of the paramount importance of protecting the public and public safety and therefore considered given the circumstances of this case that they had no choice but to revoke the vehicle's Hackney Carriage licence in accordance with Section 60 (1)(c) Local Government (Miscellaneous Provisions) Act 1976 to uphold the safety of members of the public.

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

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1,2 and 5 of Part 1 of Schedule 12A of the Act.

64. APPLICATION FOR A PERSONAL LICENCE

The Applicant attended the meeting and was permitted to speak. The Applicant answered questions put to him by the Sub-Committee and the Police Representative.

A representative from Devon and Cornwall Police who had submitted a representation also attended the meeting and was permitted to speak.

Arising from consideration of the report, evidence presented and in accordance with the relevant provisions of the Licensing Act 2003 Statutory Guidance, and the

Council's Licensing Policy, it was moved by Councillor D Rollason and seconded by Councillor Gearon, and

RESOLVED that the Application for a new Personal Licence be refused under Section 120 Licensing Act 2003.

Reasons for the decision:

The Sub-Committee heard from the Police representative that the Applicant had been arrested in the early hours of 14 July 2023. The reasons for the arrest being that the Applicant was observed by police officers to be swerving and appearing to hit a kerb whilst driving a motor vehicle. Once stopped the Applicant smelt of alcoholic liquor and claimed to have had only 2 pints. There were four other people in the car who also appeared intoxicated and caused problems for the police with their behaviour. The Applicant blew 50 micrograms when the legal limit is 35 micrograms of alcohol per 100 millilitres of breath.

The Police representative continued to explain that the usual sentence length for this offence is 12 months, but the Applicant's longer sentence was likely due to the fact that he was carrying passengers at the time of the offence. The Police are concerned that the Applicant showed a lack of maturity and poor judgement and reasoning skills from someone who would be required to actively promote the licensing objectives. The Police Representative felt that the application and subsequent appeal showed an element of contempt for the system and felt it was unusual to apply while still in the middle of the rehabilitation period.

The Sub-Committee heard from Applicant that he understands the severity of the conviction and that the circumstances do not look good on paper. He works in a bar that serves drinks and food and has applied for his licence prior to the busy tourist season due to encouragement from his manager. The Applicant also clarified that when he was stopped by the police, he only remembers one person shouting and becoming emotional and he was trying to calm her down.

The Applicant explained to the Sub-Committee that he had pled guilty and was fortunate enough to be offered a driving course which he has completed. This has reduced his driving ban by 25% to 12 months. The Court hearing was on 1 August 2023, and so he is around halfway through his sentence. The Applicant explained that this one mistake has had, and will continue to have, a significant impact on his life and he is thankful that nobody was hurt.

The Applicant then explained that his manager had let him keep his job and he had plenty of character references in relation to his court appearance. He is passionate about his job and wants to be seen as hard working and succeed in moving up in his company. He has completed his BIIAB course on 17 July 2023, and could potentially be promoted if granted the personal licence. He understands that his conviction contradicts the licensing objectives and has never behaved irresponsibly at work or outside of work other than this one time. His manager has been through the expectations and requirements for holding a personal licence with employees and he felt that he understood these.

In response to comments from the police representative the Applicant agreed that he has shown a naivety in thinking drinking and then driving was acceptable but had not felt the effects of the alcohol. He had been drinking over the course of a few hours and so believed he was not over the limit and fine to drive. He would not have done so if he had any doubts he was over the legal limit. The Applicant confirmed he was planning to drive to Teignmouth from Exeter and back again when he was stopped. The Applicant also clarified that whilst he may have an opportunity to be promoted to assistant manager in the future and would be in a position of responsibility, this has not yet happened and may not happen.

In response to questions from the Licensing Officer the Applicant clarified the dates of the BIIAB test and also the length of his sentence following the driving course. The Applicant also clarified for the Sub-Committee the reasons for applying for the personal licence and if the driving incident had occurred after his manager had briefed the employees about the responsibilities of being a personal licence holder, which it had.

The Sub-Committee thanked the Applicant for appearing in front of them and felt that he had presented himself very well however, having considered the Application submitted and having heard from those present, and being mindful of Statutory Code of Guidance and Licensing policy, felt that on balance it could not approve the application for a personal licence.

Whilst the Sub-Committee accepted that the Applicant knew he had made a serious mistake, they were not convinced that the reality of the offence and the possible serious consequences had been fully realised at this time. The Applicant had been caught driving under the influence whilst carrying passengers and the Sub-Committee felt this showed poor judgment and a serious lack of understanding of the law which a personal licence holder should have.

The Sub-Committee commended the Applicant's desire to succeed and progress with the company he worked for but were concerned that the Applicant would be in a position of responsibility, possibly supervising others to serve alcohol, and also having the responsibility of having to recognise and make decisions as to when customers should not be served further alcohol. The Applicant had failed to realise that he was over the limit and the Sub-Committee were not sure if he would be able to notice these signs in members of the public, especially during busy periods.

The Sub-Committee also noted that the Applicant had been prepared to wait until his offence was spent and had only applied on the encouragement of his manager who felt it would be useful to have a decision before the tourist season began. They felt that this supported the view that the Applicant was not completely ready for the pressure and responsibilities that come with being a licence holder.

The Sub-Committee noted that it was not for them to punish the Applicant further for the offence committed, however they felt that as the conviction was still unspent granting a personal licence would significantly undermine the aim of the prevention of crime and disorder licensing objective. As such the Sub-Committee was not

satisfied that the Applicant would be able to uphold the Licensing Objectives sufficiently and therefore deemed it appropriate to refuse the personal licence.

Cllr D Rollason
Chair