

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 26 March 2015

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10am

Present: Councillors: -

Pauline Bradberry JP
Richard Gell

Andy Mercer

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andy Mercer be appointed Chairman for the Hearing.

2. DECLARATIONS OF INTEREST

No declarations of interest were noted.

3. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following item of business because exempt information, as defined under paragraphs 1 and 7 of Schedule 12A of the Local Government Act 1972, may be disclosed.

4. TO REVIEW A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

The Health Protection Manager advised that an application for a Hackney Carriage and Private Hire Driver's Licence had been received on 29 August 2014.

The application had been delayed because the applicant had failed the first knowledge test and was required to re-take it in September 2014. Queries also arose which related to the Disclosure and Barring Service (DBS) forms regarding the applicant's address history, and completion of further documentation was required to satisfy the DBS. The applicant's most recent address was provided to the Panel.

The Panel noted that the applicant also used an alternative name.

The Panel were provided with a copy of the application form, which did not make reference to any convictions or cautions.

The DBS document revealed that on 29 June 2010 at Nottingham Magistrates Court, the applicant was convicted of the following three offences:

- Theft – Shoplifting on 2 June 2010 on the Theft Act 1968 S.1 – Disposal: Fine £100/Victim Surcharge £15 and Costs of £85
- Going Equipped for Theft (other than theft of a motor vehicle) on 2 June 2010 on the Theft Act 1968 S.25 – Fine £100/Forfeiture and Destruction
- Failing to Surrender to Custody at Appointed Time on 14 June on the Bail Act 1976 S.6(1) – One Days Detention Court House

The DBS document also revealed that on 27 July 2009 the applicant received a Caution from Thames Valley Police for the offence of Theft – Shoplifting on 26 July 2009 on the Theft Act 1968 S.1.

The East Northamptonshire Licensing Policy for Hackney Carriage and Private Hire Drivers states that ‘Cautions will be treated as convictions for the purposes of this policy as they are admissions of guilt of an offence’.

The East Northamptonshire Council Licensing Policy for Hackney Carriage and Private Hire Drivers also states that for the purposes of licensing drivers there is no such thing as a spent conviction. The Licensing Authority would consider all convictions with further attention given to offences involving Dishonesty (including Theft). A copy of the Policy was provided as Appendix 1.

The East Northamptonshire Council Licensing Policy for Hackney Carriage and Private Hire Drivers states under ‘Other Matters’ that any other matters that are considered relevant to the assessment of the fit and proper person test would be drawn to the attention of the Panel. This may also include where an applicant had made a false statement or a false declaration on their application for the grant or renewal of a licence. In the absence of a reasonable explanation the Licence would normally be refused.

The Applicant was then given an opportunity to explain the omissions from the application form and to answer questions from the Panel.

The Applicant explained that when he came to England his spoken English was very limited. He also had not understood the questions on the application form and was advised, incorrectly, that he did not need to include any convictions which were over 3 years old.

The Applicant also explained that he was living with his family at the address he had provided on the DBS form. Regarding the alias he used, the Applicant explained that it was traditional in his native country, Romania, to take the wife’s name on marriage and that was the reason he used another name.

The Applicant confirmed that he had arrived in England in 2009. He sincerely regretted the events that had taken place in 2009/2010. He sought a Taxi Licence to obtain a more secure job to support his family. He was currently working, through the 247 Agency, in construction. He had had many jobs through the Agency, working for such companies as Royal Mail and DHL.

In response to a question from the Panel the Applicant advised that he had been offered taxi work in the East Northamptonshire District and that was the reason he had applied for an ENC Licence rather than apply for one in the Wellingborough district.

In summing up the Applicant said he was really sorry for the things he had done in the past. He was looking for more permanent work and having a Licence would remedy that situation.

The Panel adjourned at 10.25am to make a decision and re-convened at 11.09am to announce the decision.

RESOLVED:

The Panel has carefully considered your application for the issue of a Hackney Carriage and Private Hire Drivers Licence. In reaching its decision, the Panel had regard to:

- Government Guidance
- ENC Licensing Policy for Hackney Carriage and Private Hire Drivers
- ENC Hackney Carriages/Byelaws (Terms and Conditions)
- Rehabilitation Of Offenders Act 1974
- Rehabilitation Of Offenders Act 1974 (exceptions) (amendment) Order 2002.
- The application form submitted to East Northamptonshire Council by the applicant for a Hackney Carriage and Private Hire Drivers Licence dated 29 August 2014.
- Verbal evidence given by the Applicant
- Enhanced DBS Report
- The Applicant's marriage certificate

The application had been held up due to the applicant failing his first knowledge test and having to retake it in September 2014. There were also DBS queries over the applicant's address history which had resulted in further forms having to be completed by the applicant to satisfy the Disclosure and Barring Service.

The Panel noted that on the application form the applicant had not declared that he had been convicted of three offences on 29 June 2010 at Nottingham Magistrates Court under his alias name. The offences were:-

- Theft – shoplifting on 2 June 2010.
- Going equipped for Theft (other than theft of a motor vehicle) on 2 June 2010.

- Failing to surrender to Custody at appointed time on 14 June 2010 on the Bail Act 1976 S.6(1).

The Panel further noted that the applicant had received a caution on 27 July 2009 from Thames Valley Police for the offence of

- Theft – shoplifting on 26 July 2009

The Panel were able to question the applicant about the circumstances of these offences and were grateful for the Applicant's answers. However, the Panel wish to point out that the failure to declare these offences was a very serious omission. The Panel have decided to give the Applicant the benefit of the doubt on this matter, on the basis of the applicant's limited comprehension of the questions asked within the application form.

The Applicant explained his use of an alias was that he had taken his wife's name after their marriage.

The Panel gave serious consideration to the offences and the caution but decided that they were sufficiently dated that they no longer carried great weight.

Therefore, the Panel has decided, on a majority, that the Applicant is, on a balance of probability, a fit and proper person to be licenced to drive a Hackney Carriage/Private Hire vehicle Under Section 51 Local Government Miscellaneous Provisions Act 1976.

The Panel decided that the initial licence be conditioned to two years duration from the date of grant.

The reasons for the decision to grant are as follows:

1. The most recent offence was almost five years ago and the Councils policy states that the Applicant should be free of convictions of dishonestly for a period of between three to five years. It is now nearly five years since the most recent offence.

2. Offences of dishonesty carry less weight than other more serious offences.
3. The Applicant has been employed in a variety of jobs for a period of five years including positions of trust.
4. Due to the Applicant's passionate answers to the questions asked by the Panel.

The Panel pointed out that a Taxi Drivers licence is a trusted position and requires licence holders to be open and honest in their dealings with both the public and the Licensing Authority.

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any Party that has made representation has the Right to Appeal to the Magistrates Court within 21 days of the Decision Notification letter.

Chairman

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 16 June 2015

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 2pm

Present: Councillors: -

**Richard Gell
Andy Mercer**

Roger Glithero JP

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andy Mercer be appointed Chairman for the Hearing.

2. DECLARATIONS OF INTEREST

The Chairman announced that two members of the Panel were conflicted out of any discussion relating to the Panel Hearing and therefore he was forced to close the Hearing. The Chairman requested that the Panel be re-arranged to another date and time.

Chairman

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 29 June 2015

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 2pm

Present: Councillors: -

**Glenvil Greenwood-Smith
Gill Mercer**

Barbara Jenney

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Glenvil Greenwood-Smith be appointed Chairman for the Hearing.

2. DECLARATIONS OF INTEREST

Cllr. Glenvil Greenwood-Smith declared that both he and the Applicant lived in Raunds; they did not know each other personally.

3. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following item of business because exempt information, as defined under paragraphs 1 and 7 of Schedule 12A of the Local Government Act 1972, may be disclosed.

4. TO REVIEW A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

The Licensing Enforcement Officer, advised that an application for a Hackney Carriage and Private Hire Driver's Licence had been received on 22 April 2015.

The application made reference to fixed penalty notices. The Disclosure and Barring Service (DBS) document revealed that on 13 June 2011 at Wellingborough Magistrates Court, the applicant was convicted of Driving a Motor vehicle with Excess Alcohol on 31 May 2011 under Road Traffic Act 1988 S.5(1)(A). Disposal: fine £160, Costs £85 and Disqualification from driving reduced if course completed. Disqualified from Driving – obligatory 14 months. Victim surcharge £15.

The DBS document revealed that on 18 September 2012 at Wellingborough Magistrates Court, the applicant was convicted of the following three offences:

- Driving whilst Disqualified on 31 March 2012 under the Road Traffic Act 1988 S. 103 (1)(B). Disposal: Community Order 18/09/2013 Costs £85; Disqualified from Driving – Discretionary 6 months and an Unpaid Work Requirement.

- Use of a Mobile Phone Whilst Driving a Motor Vehicle on 31 March 2012 under Road Vehicles (construction and Use) Regulations 1986 Reg. 110(1) Disposal: no separate penalty. Driving Licence endorsed.
- Using Vehicle Whilst Uninsured on 31 March 2012 under Road Traffic Act 1988 S.143 (2). Disposal: No separate penalty. Driving Licence endorsed.

The East Northamptonshire Council Licensing Policy for Hackney Carriage and Private Hire Drivers also states that for the purposes of licensing drivers there is no such thing as a spent conviction. The Licensing Authority would consider all convictions with special attention given to offences connected with the driving of a motor vehicle.

Offences with regard to invalid or no insurance would always be relevant. The Policy also states that “a serious view is likely to be taken of convictions of driving or being in charge of a vehicle whilst unfit due to drink”. A conviction for these offences will raise serious doubts as to the applicant’s suitability to hold a licence. A period of 3 years (after restoration of the driving licence) would be required before a licence application is considered. A copy of the Policy was provided as Appendix 1.

The applicant has also been witnessed driving licensed vehicles and has received 2 warning letters from the Licensing Enforcement Officer (LEO) dated 4 March 2014 and 23 March 2015. On 9 May 2014 the applicant was also witnessed by the LEO driving a Private Hire Vehicle into the East Northamptonshire Council Office Car Park.

Following questions from the Panel, the Applicant provided an explanation of the events which had led to the various Court cases noted above. He had been stationary at traffic lights in Wellingborough when Police had witnessed him using a mobile phone. The Applicant accepted that it was against the law. He had misunderstood dates surrounding the disqualification as to when he would be allowed to drive again. The driving ban had been reduced from 14 months to 10 months as he had participated in a driver awareness course. Whilst the ban was in place he had been based in the office of the taxi company.

The Applicant was then questioned about the allegation that he had removed the licence plate from a vehicle but still continued to drive the vehicle in question. The LEO confirmed that even though a licence plate had been removed, the vehicle was still licensed. The plate related to the vehicle, not the person driving the vehicle.

It was noted that members of the Taxi Panel previously arranged for 16 June 2015 believed they had witnessed the Applicant driving a licensed vehicle into the Council car park without the licence plate, hence the reason for the deferment of the Panel Hearing.

Following questions from the Panel, the Applicant confirmed that he had three children of 8, 6 and 18 months.

The Applicant advised that he held a provisional licence to drive buses and had passed all medical requirements.

The Panel adjourned at 2.30pm to make a decision and re-convened at 3.50pm to announce the decision.

RESOLVED:

The Panel gave serious consideration to the offences which were declared at question 5 and question 8 of the application form. The DBS document revealed that on 13 June 2011 at

Wellingborough Magistrates Court, the Applicant was convicted of Driving a Motor Vehicle with Excess Alcohol On 31 May 2011. The Applicant was fined and disqualified from driving for 14 months. The Panel noted that this disqualification was reduced by 4 months after the applicant attended a driver awareness course

The DBS document also revealed that on 18 September 2012 at Wellingborough Magistrates Court the Applicant was convicted of 3 offences:-

- Driving whilst disqualified on 31 March 2012
- Use of a mobile phone while driving a motor vehicle on 31 March 2012
- Using a vehicle while uninsured on 31 March 2012

The Panel further noted that the Applicant had been witnessed driving licensed vehicles and had received two warning letters from the ENC's Licensing Enforcement Office (LEO) dated 14 March 2014 and 23 March 2015. The Panel noted that the applicant denied this and also that no officers from the council witnessed these two events. The Panel decided to give less weight to these complaints particularly as the applicant was of the view that these were malicious reports against him. The Applicant was also witnessed by the LEO driving a Private Hire Vehicle into the East Northamptonshire Council Office Car Park on 9 May 2014 although this was not followed up by a letter.

The Panel were able to question the Applicant about the circumstances of the offences and his responses were noted

The East Northamptonshire Council Private Hire Terms and Conditions state at 2.19 that ***“Private Hire Vehicles shall not be driven by unlicensed drivers under any circumstances”***

It is the duty of the Panel to determine the application on the balance of probabilities.

The Panel did take a very dim view of the offences particularly the driving with excess alcohol and use of a mobile phone whilst in charge of a motor vehicle

The Panel noted the explanation provided by the applicant regarding this offence.

The Panel also have given the applicant the benefit of doubt in terms of the applicant's miscalculation of when his licence would be restored after disqualification

Notwithstanding the above the Panel were very close to refusing the licence.

However the Panel decided unanimously that the Applicant is on a balance of probability a fit and proper person to be licenced to drive a Hackney Carriage/Private Hire vehicle.

The reasons for the decision:

- 1) The policy terms of East Northamptonshire Council
- 2) The offences are not of such a serious concern in terms of the offences are not of indecency or dishonesty

The Decision Notice will be sent out in writing. If aggrieved with the Panel's decision, the Applicant and any Party that has made representation has the Right to Appeal to the Magistrates Court within 21 days of the Decision Notification letter.

Chairman