

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 16 December 2015

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00am

Present: Councillors: -

Richard Gell
Pam Whiting

Andy Mercer

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Andy Mercer be appointed Chairman of the Panel for the Hearing.

2. APOLOGIES FOR ABSENCE

There was an apology for absence from Councillor Gill Mercer.

3. DECLARATIONS OF INTEREST

No interests were declared.

4. 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.

5. CONSIDERATION OF A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

(The Applicant was present at the Hearing and was accompanied by the owner of a local taxi firm).

The Licensing Enforcement Officer reported that an application for a Hackney Carriage and Private Hire Driver's Licence had been received on 2 October 2015.

The Disclosure and Barring Service (DBS) document had revealed that on 8 March 2007, the applicant had been convicted of two offences of being the owner of a dog allowing it to be dangerously out of control in a public place and causing injury under the Dangerous Dogs Act 1991.

The DBS document also revealed that on 24 April 2006, the Applicant had accepted a caution from Northamptonshire Police for the offence of assault occasioning actual bodily

harm under the Offences Against The Person Act 1861.

The Applicant had also disclosed that he had received a Fixed Penalty Notice for one offence of CU80 (Breach of requirements as to control of the vehicle, mobile phone etc.) on 17 March 2011.

The Licensing Officer confirmed that the Applicant had been discussed with the Borough Council of Wellingborough who advised that they had no issues with him identified on their file.

The Panel did not ask any questions of the Licensing Enforcement Officer.

The Chairman invited the Applicant to address the Panel in support of the application. The Applicant stated that he took full responsibility for not completing the application form correctly but he had believed that the questions about convictions related only to driving offences and notification of any other offences would come through the DBS. He provided an explanation as to the two dog offences highlighted on the DBS.

In response to a question from the Panel, the Applicant provided an explanation as to the caution for the offence of assault occasioning actual bodily harm.

The Panel adjourned at 10.13am to make a decision and re-convened at 10.47am to announce the decision as follows:

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
- Local Government (Miscellaneous Provisions) Act 1976
- ENC Licensing Policy for Hackney Carriage and Private Hire Drivers
- ENC Private Hire Operators/Drivers Private Hire Vehicles (Terms and Conditions)
- ENC Hackney Carriages/Byelaws (Terms and Conditions)
- Rehabilitation Of Offenders Act 1974 (exceptions) (amendment) Order 2002.
- Rehabilitation Of Offenders Act 1974
- The application form submitted to East Northamptonshire Council by the Applicant for a Hackney Carriage and Private Hire Drivers Licence received on 2 October 2015.
- Verbal evidence given by the Applicant
- Answers given by the Applicant to questions asked by the Panel
- Enhanced DBS Report
- The report from the East Northamptonshire Council Licensing Officer

The Panel noted that the applicant had declared on the application form that he holds a licence to drive hackney carriages or private hire vehicles for the Borough Council of Wellingborough and that his licence will expire on 31 October 2016.

The Panel noted that the completed application form made reference, to one offence only, at question 5 regarding Fixed Penalty Notices, that the Applicant had on 17 March 2011 received a CU80. The Panel also noted that at question 8 it states "*Please give details of all convictions and cautions, no matter how old they are*". Reference was made that on 17 March 2011 the Applicant had received a CU80.

The Panel further noted that the actual DBS document revealed that on 8 March 2007, at Corby Magistrates Court the Applicant was convicted of the following offences:

- Owner of a dog allowed it to be dangerously out of control in a public place and cause injury on 15 February 2006 under Dangerous Dogs Act 1991. The applicant received a community order 12 months unpaid work requirement 200 hours, disqualified from keeping a dog for 10 years.
- Owner of a dog allowed it to be dangerously out of control in a public place and cause injury on 31 March 2006 under Dangerous Dogs Act 1991. The applicant received a community order 12 months unpaid work requirement 200 hours, compensation £300.00

Also on 24 April 2006, the applicant accepted a caution from Northamptonshire Police for the following offence:

- Assault Occasioning Actual Bodily Harm on 22 April 2006, Offences Against the Person Act 1861 S.47

The Panel wish to point out that the failure to declare these offences was a very serious omission.

The Panel were able to question the Applicant about the circumstances of the offences and were grateful for the Applicant's candid answers.

The Applicant stated that he thought the questions concerning offences only referred to driving offences. The Panel accepted his explanation.

The Licensing Authority will consider all convictions with special attention given to offences involving assault.

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

The Panel have 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 and ought therefore to be licensed

The reasons for the decision are as follows:

- The length of time that has passed since the convictions and caution is sufficient that the Panel felt that they were no longer relevant.
- The Panel noted that there had been no convictions for non-motoring offences for a period of eight years.
- The Panel noted that the motoring offence was four years ago and felt that it was insufficiently recent to be still relevant.

The Panel would, however, like to warn the Applicant that any future breaches of the application policy or misconduct would not be looked upon favourably and may result in the licence being suspended/revoked.

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: 18 January 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00am

Present: Councillors: -

Tony Boto
Helen Howell

Glenvil Greenwood-Smith

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

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

2. APOLOGIES FOR ABSENCE

There were no apologies for absence.

3. DECLARATIONS OF INTEREST

No interests were declared.

4. 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.

5. CONSIDERATION OF A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

(The Applicant was present at the Hearing).

The Licensing Enforcement Officer reported that an application for a Hackney Carriage and Private Hire Driver's Licence had been received on 20 November 2015. The Applicant had previously applied for a Driver's Licence in February 2014, but had withdrawn the application before a hearing could be held.

The Applicant had stated that he had previously held a licence to drive hackney carriages and private hire vehicles between 1993 – 2013 – 2014. The Applicant's driver badge had in fact been surrendered by him in June 2012 as he had been disqualified from driving for six months in April 2012. The Applicant did not inform the Council that he had been disqualified from driving.

The Applicant had been arrested for driving whilst disqualified in June 2012 and the vehicle plate of the vehicle had been removed by the police. The Applicant was carrying a fare paying passenger to Heathrow Airport at the time.

In July 2012, the Applicant had his Operator's Licence revoked as he was no longer considered to be a fit and proper person to hold such a licence.

The Applicant's DVLA record showed a TT99 offence code which signified a disqualification under the 'totting-up' procedure. In order to have been disqualified for six months, the Applicant must have received 12 penalty points or more within three years.

In his application, the Applicant had stated, when asked for details of convictions and cautions, 'Driving offences listed from DVLA in your possession'.

Since his disqualification the Applicant had received another endorsement TS10, failing to comply with traffic light signals, with four penalty points. This endorsement was still current.

Nowhere on his application form did the Applicant declare his disqualification for driving or the loss of his driver, vehicle and operators licences.

The Panel did not ask any questions of the Licensing Enforcement Officer.

The Chairman invited the Applicant to address the Panel in support of the application.

With the agreement of the Panel, the Applicant submitted additional information in support of his application. The Legal Adviser confirmed that the additional information had already been circulated as part of the agenda pack for today's hearing.

The Applicant stated that both medical examinations he had been required to undertake had resulted in the doctor stating that he was fit to drive a hackney carriage or private hire vehicle and the Licensing Authority should be satisfied that he was medically fit to drive. The Licensing Enforcement Officer confirmed that she was satisfied that the Applicant was fit to drive.

In regard to being disqualified from driving, the Applicant stated that he had appealed the Magistrate's decision but had not heard anything further. He had been advised that as an appeal had been submitted he was able to continue driving until the appeal had been heard. Therefore, it was his belief that he was not disqualified as he had been waiting for his appeal to be heard.

The Applicant provided an explanation to the circumstances in receiving an endorsement TS10, failing to comply with traffic light signals, with four penalty points.

The Applicant stated that any contracts he had held as an operator had been instructed to other taxi firms and there was no proof that he was undertaking unlicensed taxi work.

In response to questions from the Panel, the Applicant confirmed that he was the owner of a taxi firm. He explained that even though he had appealed his disqualification from driving he had handed in his drivers licence as he had decided to move on to other things as he was disappointed in the way he had been treated. He explained that he had not notified the Council of his additional points as he had produced his DVLA record and the offence had not been committed at the time of making the application.

In summing up, the Applicant stated that he had held licences for virtually all types of

vehicles during his working life. He was a competent person who was honest and straight forward. He had built up two taxi businesses and needed to work and do something with his time. He admitted that he had made mistakes in the past and when he had been caught for speeding he had accepted the punishment. He had a young family to support and would urge the Panel to grant him a licence.

The Panel adjourned at 10.57am to make a decision and re-convened at 12.09pm to announce the decision as follows:

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
- Local Government (Miscellaneous Provisions) Act 1976
- ENC Licensing Policy for Hackney Carriage and Private Hire Drivers
- ENC Private Hire Operators/Drivers Private Hire Vehicles (Terms and Conditions)
- ENC Hackney Carriages/Byelaws (Terms and Conditions)
- Rehabilitation Of Offenders Act 1974 (exceptions) (amendment) Order 2002.
- Rehabilitation Of Offenders Act 1974
- The application form submitted to East Northamptonshire Council by the Applicant for a Hackney Carriage and Private Hire Drivers Licence received on 20 November 2015.
- Verbal evidence given by the Applicant
- Answers given by the Applicant to questions asked by the Panel
- Enhanced DBS Report
- The report from the East Northamptonshire Council Licensing Officer

The Panel noted that the Applicant had previously applied for a Hackney Carriage and Private Hire Drivers Licence on 21 February 2014, but had withdrawn his application before the panel hearing was held on 3 September 2014. The time elapsed was due to failed knowledge tests and also awaiting updated medical evidence and an adjournment of the hearing requested by the Applicant.

The Panel noted that at question 3 on the completed application form the applicant had stated that he had previously held a licence to drive hackney carriages or private hire vehicles which expired in 1993, 2013 and 2014.

The Panel further noted that:

- The applicant had been disqualified from driving for 6 months at Bedford Magistrates Court on 19 April 2012.
- The applicant had not informed East Northamptonshire Council that he had been disqualified from driving.
- On 20 June 2012 the applicant was arrested by the Police for driving when disqualified. The applicant was driving PHV/62 and was carrying a fare paying passenger to Heathrow Airport. The vehicle plate was removed by the Police and returned to the Council.
- The applicant surrendered his drivers badge on 29 June 2012.
- On 26 July East Northamptonshire Council Licensing Panel had revoked the applicant's Operators Licence as they considered the applicant was no longer a fit and proper person to hold such a licence.

At questions 4 and 5 of the completed application form the applicant had stated:-

- Bedford Magistrates Court 6 months speeding in rural areas approx. 2-4am.

In order to be disqualified for 6 months the application must have received 12 penalty points or more within 3 years.

The Panel also noted that at question 8 it states "*Please give details of all convictions and cautions, no matter how old they are*". The applicant had answered "*Driving offence listed from DVLA in your possession*"

The Panel also noted that since the applicant's disqualification he had received another endorsement TS10 – failing to comply with traffic light signals with 4 penalty points. This endorsement is still current.

The applicant failed to declare his disqualification of driving and the loss of his driver, vehicle and operators licence on the application forms.

The Panel wish to point out that the failure to declare these offences was a very serious omission.

East Northamptonshire Licensing Policy for Hackney Carriage and Private Hire Drivers states that for the purpose of licensing drivers there is no such thing as a spent conviction. The Policy also states that convictions relating to driving offences committed when the applicant was driving a Hackney Carriage or Private Hire vehicle will be considered more seriously.

The Panel were able to question the Applicant about the circumstances of the offences.

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

The Panel have decided unanimously that the Applicant is on a balance of probability not a fit and proper person to be licenced to drive a Hackney Carriage/Private Hire vehicle and ought not, therefore, to be licenced

The reasons for the decision are as follows:

1. The Applicant's dishonesty, in so far as, not completing the application form accurately.
2. Failure by the applicant to disclose the convictions and also any penalty points.
3. Evidence of blatant disregard for the law and ENC's Licensing Policy.
4. The statement of Amanda Robinson, ENC's Environmental Health Officer re the availability, of the applicant, to take a fare paying passenger to East Midlands Airport on 8 July 2014. The call being taken at the applicant's home telephone number, suggested, on balance, that the applicant continued to act as a taxi driver when the applicant was not licenced to do so. The Panel noted that the suggestion that such calls could be sub-contracted, however, this would have been unlawful as the applicant did not hold an Operators License.
5. The applicant did not have insurance that would have covered him when taking a fare paying passenger to Heathrow Airport on 20 June 2012.
6. The Panel were of the view that the applicant was evasive in his responses to questions posed by the Panel.
7. It was noted by the Panel that the Customer Review posted on the applicant's business web site dated 9 July 2015, again on balance, suggests that the applicant was acting as a Private Hire/Hackney Carriage driver/Operator without being licenced so to do.

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: 8 February 2016

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 10.00am

Present: Councillors: -

Richard Gell
Gill Mercer

Barbara Jenney

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Richard Gell be appointed Chairman of the Panel for the Hearing.

2. REQUEST FOR ADJOURNMENT

The Chairman advised that the Licence Holder had requested an adjournment of the Panel until 1.00pm this afternoon as he was unable to attend this morning. The Panel had considered the request and decided to proceed in his absence as he had received plenty of notice of the hearing and also the unavailability of the Police this afternoon.

3. APOLOGIES FOR ABSENCE

An apology for absence was received from the Licence Holder.

4. DECLARATIONS OF INTEREST

No interests were declared.

5. 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.

6. CONSIDERATION OF A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

(The Licence Holder was not present at the Hearing).

The Interim Health Protection Manager reported that a Suspension Notice had been served to the Licence Holder on 27 November 2015 in the interests of public safety following an allegation being made regarding his conduct whilst transporting children as part of a

Northamptonshire County Council (NCC) school contract.

The Interim Health Protection Manager clarified that the options available for the Panel were to continue with the suspension for a determinate period of time, withdraw the suspension or revoke the Hackney Carriage and Private Hire Drivers Licence.

An alleged assault had been recorded as a crime and reached the MASH (Multi Agency Safeguarding Hub) police threshold which required an investigation to be undertaken. This was not a criminal investigation at this time as no formal complaint of the alleged assault had been made by the child's family.

At the initial Local Authority Designated Officer (LADO) meeting on 27 November 2015, it came to light that the police were in possession of more information concerning the Licence Holder's past convictions than was made available to the Council on the DBS form at the time of his application for a Hackney Carriage/Private Hire Drivers Licence. The Licence Holder had received a Police caution for harassment in 2007 that the Council was not aware of and that he did not declare on his original application for a licence. The Council's application form stated clearly that all cautions and convictions must be listed no matter how old they were.

A further LADO meeting was held on 15 January 2016 following the conclusion of the investigation by the Police. The Police advised that the Licence Holder had denied all of the allegations against him, he believed he should have had an escort present and stated that the children were problematic. He said that the alcohol was in a bag of shopping in the back of the vehicle and the children had got it from there. The Licence Holder also stated that he had to stop at least 10 times throughout the journey as he kept trying to get them to put their seatbelts on.

The child was clear when questioned in mid-January 2016 that the Licence Holder had slapped and pushed her. It had been commented by Social Services, the School and the police that the child's story had been consistent throughout the investigation.

The Police concluded that as the Licence Holder had made no admissions and there was no evidence to take the case through the court process that it came down to the word of an adult against the word of a child.

At the LADO meeting held on 15 January, it was determined that taking all information into consideration, that the outcome of the investigation was that the allegation was substantiated. For the purposes of the LADO investigation substantiated was defined as: *"that after considering all available information there is sufficient evidence on the balance of probability, that the allegation is proved."*

The Designated Officer expressed his concerns that whilst the allegation could not be proven beyond all reasonable doubt, the irresponsibility of the Licence Holder to not declare all of his criminal convictions could have led to serious consequences.

The NCC Transport Contract Officer agreed at the meeting that he would not allow the Licence Holder to carry out any further NCC School Contracts.

In response to questions from the Panel, the Interim Health Protection Manager confirmed that it was made clear to all applicants that they needed to declare all convictions and cautions and it was also made clear in the Policy. The Licence Holder had been able to appeal against the suspension to the Magistrates Court but had chosen not to do so. The NCC contract was to transport a family of children to three separate sites and was awarded to the operator, who then asked the Licence Holder to drive for him. The Licence Holder had

driven the family on more than one occasion.

The Chairman invited the Police representative to address the Panel.

The Police representative stated that she had been unable to speak to the child until after the school Christmas holidays but a decision had been taken to speak to the Licence Holder before Christmas. The Licence Holder had been cautioned but not arrested and had chosen not to have a legal representative present. The Licence Holder denied all of the allegations stating the children were difficult, which had been acknowledged by the children's schools.

On the day of the incident, the Licence Holder had stated that the door of the vehicle had been open whilst one of the smaller children had got out of the vehicle. The older child then pushed the alleged victim back into the vehicle. He denied any physical contact. The bottle of alcohol had been removed by a child from shopping which had been stored in the back of the vehicle.

The Police representative advised that the child had been spoken to in January. It had been difficult to speak to the parents as they had not engaged with the Police during the investigation. The child had made the allegation immediately and the school had spoken to the father who confirmed that the child was upset but had no visible injuries. The child was clear what had happened. The older child had denied pushing the child.

The decision by the Police was that no further action be taken.

In response to questions from the Panel, the Police confirmed that the LADO meeting had been told the outcome of the police investigation and whilst the decision had not been signed off they were told that it was highly likely no further action would be taken as it did not meet the threshold. It was confirmed that the 'mini punch' game had been instigated by the family and not the Licence Holder.

The Panel adjourned at 10.30am to make a decision and re-convened at 11.37am to announce the decision as follows:

RESOLVED:

The Licence Holder was unable to attend and sought an adjournment until 1:00pm. The Panel considered an adjournment, however decided unanimously to proceed with the hearing. The reasons for continuing with the hearing were:

1. The Members were of the view that sufficient notice had been provided to the Licence Holder.
2. The agency taskforce, namely the Police, were unable to convene at 1:00pm as requested by the Licence Holder due to other business engagements.

Following the issue of a Suspension Notice on 27 November 2015 which had immediate effect under Section 61 (2B), Local Government (Miscellaneous Provisions) Act 1976, the Panel convened today for the purposes of determining whether the suspension ought to continue for a determinate period of time or whether the licence ought to be revoked, or whether the licence ought to be reinstated.

The Panel has carefully considered the report by East Northamptonshire Council's Hackney Carriage and Taxi Licensing Section to determine the fitness of the licence holder.

In reaching its decision, the Panel had regard to:

- Local Government (Miscellaneous Provisions) Act 1976

- ENC Licensing Policy for Hackney Carriage and Private Hire Drivers
- ENC Private Hire Operators/Drivers Private Hire Vehicles (Terms and Conditions)
- ENC Hackney Carriages/Byelaws (Terms and Conditions)
- Suspension Notice
- Letter from NCC regarding the outcome of the investigation of the licence holder regarding school contracts
- Letter from the Local Authority Designated Officer regarding the outcome of the investigation of the licence holder.
- The report from the East Northamptonshire Council's Interim Health Protection Manager
- Verbal evidence given by D.C. Stacey Hill who had interviewed the licence holder

The decision of the Panel is governed by Section 61 of Local Government Miscellaneous Provisions Act 1976.

The Panel therefore decided the fitness of the Licence Holder under Section 61 (1) (b) of the above legislation and the East Northamptonshire Council Criminal Policy section 4.6.5 where an applicant has made a false statement or a false declaration on their application for the grant or renewal of a licence, the licence will in the absence of a reasonable explanation normally be refused.

The Panel considered the suspension notice, the letter from NCC regarding the outcome of the investigation of the licence holder and the letter from the Local Authority Designated officer regarding the outcome of the investigation, along with the verbal evidence of D.C. Stacey Hill.

The Panel has therefore unanimously reached the decision that, on a balance of probability, the Licence Holder is not a fit and proper person to continue being licensed as a private hire/hackney carriage driver. The Panel have therefore decided to revoke the licence holder's combined driver's licence.

The Panel have decided to immediately revoke the licence in the interests of public safety, pursuant to Section 61 (2B) Local Government (Miscellaneous Provisions) Act 1976.

The reasons for this decision are:-

- The LADO investigation conclusion was that the allegations against the licence holder were substantiated. (That after considering all available information there is sufficient evidence on the balance of probability, that the allegation is proved).
- The failure of the licence holder to declare all convictions/cautions as part of his original application.
- In the interest of public safety.

The Panel received legal advice in terms of:

1. The legal test to be applied – burden on a balance of a probability.
2. The options available to the Panel.

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