

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 12 November 2010

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 9:30am

Present: Councillors: -

Pauline Bradberry JP
Peter MacGovern

Anna Sauntson (Chairman)

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Anna Sauntson be appointed Chairman for this Hearing.

2. MINUTES

The minutes of the meeting of the Licensing (Taxi and Miscellaneous) Panel held on 10 August 2010 were approved and signed by the Chairman.

3. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following items 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. APPLICATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCES

The Licensing Officer reported on two applications for Hackney Carriage and Private Hire Driver's Licences under the Town Police Clauses Act 1847 (as amended) and the Local Government (Miscellaneous Provisions) Act 1976.

Reference was made to the Council's Hackney Carriage and Private Hire Driver's Criminal Records Policy when considering these applications.

(i) Applicant One

The applicant attended the Hearing and the Criminal Records Bureau (CRB) disclosure revealed that he had received convictions for the following two offences on 17 October 2007:

- (a) Driving otherwise than in accordance with a Licence on 4 May 2007. No separate penalty. Driving Licence was endorsed.

- (b) Driving a motor vehicle with excess alcohol on 4 May 2007. Disqualified from driving for 16 months and was fined £150 with £60 costs. Driving Licence was endorsed.

The Panel noted that the applicant had failed to disclose the two convictions received in October 2007 under Question 8 on his application form.

The applicant spoke in support of his application explaining the circumstances of the offences to the Panel and stated that:

- He had admitted the two offences at Court which had been his only offences since living in England and he had not re-offended since 2007
- He apologised for not disclosing the convictions received in 2007 and was unsure whether or not he had to disclose them
- He was currently working in a restaurant and had been offered a drivers job at a taxi firm in Rushden
- He had passed his UK driving test in May 2009.

After considering the Officer's report and representations made by the applicant, including advice from the Solicitor, the Panel retired to consider the application and evidence presented at the Hearing, and it was

RESOLVED:

That the application for a Hackney Carriage and Private Hire Driver's Licence be refused for the reasons stated below.

The Chairman read out the following statement giving the reasons why the Panel had refused the application: -

"The Panel has considered at some length your application and has decided not to grant your application for a Hackney Carriage and Private Hire Driver's Licence.

The reasons for refusing your application are as follows:-

1. The Panel had reference to the East Northamptonshire Council Hackney Carriage and Private Hire Drivers Criminal Records Policy – Version 6 dated 14 April 2010 when making its decision.
2. We considered the two convictions as revealed by the CRB check and were very concerned about both the convictions.
3. We were also particularly concerned that you had had not declared these convictions in question 8 of your application form which clearly states 'Please give details of all convictions and cautions, no matter how old they are. If necessary, use a separate piece of paper'. Upon questions from the Panel whilst you answered the questions you still failed to fully convince the Panel your reasons for the omission. In particular, the Panel had regard to the above policy, at paragraph 4.2.1 where the Panel is entitled to take into account:

A serious view will be taken of convictions of driving or being in charge of a vehicle whilst unfit due to drink or drugs. A conviction for these offences will raise serious doubts as to the applicant's suitability to hold a Licence. A period of three years (after restoration of the driving licence) would be required before a Licence application is considered.

The Panel did not find there to be any exceptional circumstances in your application that would have justified deviating from this policy.

Also at Paragraph 4.5.2 of the said Policy

For these reasons a serious view will be taken of any conviction involving dishonesty (in this case, driving without a licence). Normally a period of three to five years free of convictions will be required before entertaining an application.

The Panel did not find there to be any exceptional circumstances in your application that would have justified deviating from this policy.

4. The Panel have strict guidance and the East Northamptonshire Council Hackney Carriage and Private Hire Drivers Criminal Records Policy – Version 6 dated 14 April 2010 is quite clear that when considering convictions they are never spent for Hackney Carriage and Private Hire Drivers' Licence. A Hackney Carriage and Taxi Drivers' position is one of trust and honesty. The Licensing Authority's key objective is ensuring public safety and protection from criminal activity.
5. It is our decision therefore, in the light of the Council's policy and the general legislation, and the fact that you did not reveal these convictions, that your application be denied.

The Decision Notice would be sent to the applicant and he had the right of appeal to the Magistrates Court within 21 days of receiving the Notice if he was aggrieved with the Panel's decision."

(ii) Applicant Two

The applicant attended the Hearing and the Criminal Records Bureau (CRB) disclosure revealed that he had received two convictions and a caution for offences on the following dates:

- (a) 12 December 1988:
 - Indecent exposure. No date given. Received a Probation Order for 6 months
 - Indecent exposure. No date given. Received a Probation Order for 6 months concurrent
 - Indecent exposure. No date given. Received a Probation Order for 6 months concurrent.
- (b) 24 June 1998 - Common assault. No date given. Received a conditional discharge for 12 months with costs of £175.
- (c) 22 September 2006 - Destroyed or damaged property. The value of the damage was £5,000 or less for which he received a Caution.

The Panel noted that the applicant had failed to disclose the caution received in September 2006 under Question 6 on his application form.

The applicant spoke in support of his application explaining the circumstances of the offences to the Panel and stated that:

- The offences in December 1988 had occurred whilst he was under the influence of alcohol and going through a difficult period in his life

- The offence in June 1998 had occurred when some teenagers were throwing stones at his property. He had gone outside to tell them off and had grabbed one of them
- The offence in September 2006 had occurred when he was having an argument with an ex-partner and had damaged the front door of a property
- His application form had been completed by a relative on his behalf and he apologised to the Panel for not disclosing the caution
- He mentioned that he had also received two speeding offences in 2005 and 2006
- He was currently working full time as a driver/warehouseman and had been offered a part-time drivers job at a taxi firm in Rushden.

A relative of the applicant was also present and spoke in support of the applicant. She had known him for thirteen years and that he had now settled down and was a reformed person.

The applicant also submitted a character reference from his present employer.

After considering the Officer's report and representations made by the applicant and relative, including advice from the Solicitor, the Panel retired to consider the application and evidence presented at the Hearing, and it was

RESOLVED:

That the application for a Hackney Carriage and Private Hire Driver's Licence be refused for the reasons stated below.

The Chairman read out the following statement giving the reasons why the Panel had refused the application: -

"The Panel has considered at some length your application and has decided not to grant your application for a Hackney Carriage and Private Hire Driver's Licence.

The reasons for refusing your application are as follows:-

1. The Panel had reference to the East Northamptonshire Council Hackney Carriage and Private Hire Drivers Criminal Records Policy – Version 6 dated 14 April 2010 when making its decision.
2. We considered the convictions as revealed by the CRB check and were very concerned about these.
3. The Panel had reference to the Councils policy and in particular to Paragraph 4.3.1.

As Hackney Carriage and Private Hire Vehicle Drivers often carry unaccompanied passengers, applicants with convictions for sexual offences will normally be refused.

The Panel was concerned that there were 3 separate offences involving indecent exposure which took place in a public place, including a park, and that alcohol was an influence in your behaviour. The Panel did have regard to the date when the convictions took place, but were still concerned about these convictions. The Panel did not find there to be any exceptional circumstances in your evidence to the Panel that would have justified deviating from this policy.

And also Paragraphs 4.4.1 and 4.4.2 of the said Policy:

4.4.1 *As Hackney Carriage and Private Hire Vehicles drivers maintain close contact with the public, a firm line will be taken with applicants who have convictions for violent or abusive offences. This category includes public order offences and criminal damage.*

Beyond explaining that the incidents of criminal damage took place during the course of a domestic dispute, the applicant did not give any evidence that persuaded the Panel that this conduct should be disregarded.

4.4.2 *At least 5 years free of such convictions will normally be necessary before an application is entertained and even then a strict warning as to future conduct will be given.*

The Panel did not find there to be any exceptional circumstances in your evidence to the Panel, that would have justified deviating from this policy.

4. We were also particularly concerned that you had omitted to declare the caution received on 22 September 2006 in question 6 of your application form which clearly states "Have you ever received a caution?" Upon questions from the Panel whilst you answered the questions, you still failed to fully convince the Panel your reasons for this omission.
5. The Panel did have reference to the written reference provided by your employer and to the evidence given orally by a relative in support of your application. However, the Panel did not conclude that this evidence was sufficient to override the Panels findings mentioned above.
6. The Panel have strict guidance and the East Northamptonshire Council Hackney Carriage and Private Hire Drivers Criminal Records Policy – Version 6 dated 14 April 2010 is quite clear that when considering convictions they are never spent for Hackney Carriage and Private Hire Drivers' Licence. A Hackney Carriage and Taxi Drivers' position is one of trust and honesty. The Licensing Authority's key objective is ensuring public safety and protection from criminal activity.
7. It is our decision, in the light of the Council's policy and general legislation and the fact that you did not reveal this caution, that your application be denied.

The Decision Notice would be sent to the applicant and he had the right of appeal to the Magistrates Court within 21 days of receiving the Notice if he was aggrieved with the Panel's decision."

Chairman

LICENSING (TAXI AND MISCELLANEOUS) PANEL

Date: 6 December 2010

Venue: East Northamptonshire House, Cedar Drive, Thrapston

Time: 9:30am

Present: Councillors: -

Brian Northall (Chairman)

Glenvil Greenwood-Smith
Peter MacGovern

1. APPOINTMENT OF CHAIRMAN

RESOLVED:

That Councillor Brian Northall be appointed Chairman for this Hearing.

2. MINUTES

The minutes of the Panel meeting held on 13 October 2010 were signed by the Chairman as a correct record.

3. DECLARATIONS OF INTEREST

Following advice from the Council's Solicitor, Councillor Peter MacGovern declared a personal interest in the application to be considered because he had known the parents of the applicant. He did not know the applicant and considered he would be able to take part in the determination with an open mind.

4. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the public and press be excluded from the meeting during consideration of the following items 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. APPLICATION FOR A HACKNEY CARRIAGE AND PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer reported on an application for a Hackney Carriage and Private Hire Driver's Licence under the Town Police Clauses Act 1847 (as amended) and the Local Government (Miscellaneous Provisions) Act 1976. Reference was made to the Council's Hackney Carriage and Private Hire Driver's Criminal Records Policy when considering this application.

The Criminal Records Bureau (CRB) disclosure revealed that the applicant had received a number of convictions for various offences, and these are shown in the Appendix to these

minutes.

The Panel noted that the applicant had not included details of his convictions under Question 8 but had referred to his answer to Question 6 which stated "Yes I have but as its been so long ago, full details are hard. From the age of 18 up until I was 29 years old, I've had a few cautions, also convictions for fighting, criminal damage and theft".

The applicant was present at the hearing and spoke in support of his application. He made the following comments:-

- He was unsure of the details of the offences and convictions and knew that the full picture would emerge in the CRB disclosure and the Panel would be provided with further particulars then
- Since 2000, he had dedicated his life to the martial arts and had worked alongside Councillors, opening a gymnasium to provide training to young people aged 7 upwards, and working alongside an instructor/school teacher
- For the last 6 or 7 years, he had dedicated time to charity work and had given back a little to the community, with a number of business sponsors being secured and had also built up a following with parents and children in Rushden
- He was also involved in charity work for Kettering General Hospital and would be raising money for handicapped swimmers soon
- He was not proud of his criminal past but now wanted to secure a permanent full time job; and was trying to do "better things"
- He had not had any offences or convictions for nearly 11 years
- He enjoyed driving and his father was also a taxi driver working for the firm proposing to employ him, and he fully understood and recognised the disciplines and duty of care to the public required by a taxi driver.

The applicant's prospective employer was also present at the hearing and spoke in favour of the application. He provided a character reference for the applicant, who, he considered, was helpful, polite and "a nice person" who was also making a valuable contribution to the community.

The Panel asked the applicant a number of questions about the various offences, and the applicant responded to all the questions. The circumstances of the last conviction for affray were outlined to the Panel and the applicant assured Members that he no longer had the temptation to "get involved" in issues and he fully appreciated that taxi drivers had a responsibility to behave impeccably. It was noted that the applicant had passed his driving test in 1999, but his provisional licence has not immediately been converted into a full licence. . He was fully aware of the Council's Hackney Carriage and Private Hire Drivers Criminal Records Policy and understood that there were no "spent" convictions as far as taxi drivers were concerned.

After considering the Officer's report and representations made by the applicant, including advice from the Solicitor, the Panel retired to consider the application and evidence presented at the hearing, and it was

RESOLVED:

That the application for a Hackney Carriage and Private Hire Driver's Licence be granted for two years with standard conditions.

The Chairman then read out the following statement giving the reasons why the Panel had granted the application: -

“The Panel has carefully considered your application for the issue of a Hackney Carriage and Private Hire Drivers Licence. The Panel has reached the decision to approve the granting of the Licence for a period of two years with normal conditions.

The reasons for granting the application are as follows:-

1. The Panel had reference to the Government Guidance and East Northamptonshire Council’s Hackney Carriage and Private Hire Drivers Criminal Records Policy when making its decision. The Panel noted the convictions ranging from drunk and disorderly, road traffic offences, theft, burglary to drugs possession and supplying and affray. Whilst considered very serious, the Panel felt the offences were sufficiently dated not to carry significant weight in its decision making.
2. The Panel noted that the applicant had not included any specific convictions under Question 8 on his application form, which clearly states *From 28 February 2002 the Rehabilitation of Offenders Act 1974 (Exceptions) (Amendment) Order 2003 added hackney carriage and private hire drivers to the list of excepted occupations set out in the act. Please give details of all convictions and cautions, no matter how old they are. If necessary, use a separate piece of paper.* The Panel accepts the applicant’s explanation.

The Panel has taken note of your work for charity, and also notes that a potential employer gave reference for you verbally at the Hearing, and that your last offence was committed 10 years ago.

3. The Panel wishes to stress the importance it places on individuals who drive members of the public for a living being fully compliant at all times with all aspects of the law.

The Panel wishes to remind the applicant that first and foremost, his duty is the care and welfare of his passengers, some of whom may be vulnerable people”.

The Decision Notice would be posted to the applicant and should he have any grievance with the Panel’s decision today he had the right to appeal to the Magistrates Court within 21 days of receiving the notice.

Chairman

APPENDIX TO MINUTE 5

Date of Conviction	Offence/Date	Court	Disposal
9 February 1987	Burglary and theft – non dwelling – No date given	Wellingborough Magistrates	£100 fine. Compensation £263. Costs £15
28 June 1990	Attempt/obtaining property by deception. No date given.	North Beds Magistrates	Probation order 18 months. Compensation £1000
28 June 1990	Theft – No date given	North Beds Magistrates	Probation order 18 months costs £25
18 September 1990	Theft from vehicle – No date given	Wellingborough Magistrates	Fine £30
18 September 1990	Minor road traffic offence – No date given	Wellingborough Magistrates	Not separately dealt with.
18 September 1990	No insurance – No date given	Wellingborough Magistrates	Fine £50 – costs £10 – driving licence endorsed.
2 May 1991	Burglary and theft non-dwelling No date given	Wellingborough Magistrates	Community service order 120 hours – concurrent. Compensation £100
2 May 1991	Supplying controlled drug. No date given	Wellingborough Magistrates	Community service order 120 hours.
2 May 1991	Possessing controlled drug No date given	Wellingborough Magistrates	Community service order 120 hours.
2 May 1991	Criminal damage no date given	Wellingborough Magistrates	Community service order concurrent.
17 February 1992	Burglary and theft non-dwelling. No date given	Wellingborough Magistrates	Imprisonment 6 months wholly suspended 2 years. Compensation £250.
7 December 1993	Burglary and theft non dwelling. No date given	Wellingborough Magistrates	Imprisonment 6 months consecutive resulting from original conviction of 17.2.92
16 February 1998	Being drunk and disorderly. No date given	Wellingborough Magistrates	Conditional discharge. 12 months costs £50.
7 February 2000	Affray No date given	Northampton Crown Court	Imprisonment 8 months.