

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 28th July, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and Cllr R V Roud

Councillors Mrs S M Barker and D Keers were also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/33 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/34 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/35 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 07/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for a Probationary Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel was advised that the Applicant, in completing the questionnaire which accompanied the application, had failed to declare a Caution for Common Assault dated 16 December 2011 and a Caution for Battery dated 29 December 2011.

The Panel had regard to the report of the Director of Central Services and to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that Public Safety was paramount when processing a prospective candidate to ensure that the applicant was a 'Fit and Proper' person to hold a licence;
- (2) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its merits;
- (3) that, with regard to previous convictions, the overriding consideration was the safety of the public although some discretion may be appropriate if the offence was isolated and there were mitigating circumstances; and
- (4) that Section 12.3 of the Policy stated that an application would normally be refused when it had been made within 8 years of receipt of a Caution for Common Assault.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the Cautions and to the comments made by the proposed Mentor regarding the Applicant's employment. In the circumstances, however, the Panel was unconvinced that the explanations given were sufficient to overturn the position as set out in the Council's Policy. Having considered all of the circumstances the Panel was not satisfied that the Applicant was a fit and proper person to hold a Probationary Private Hire Driver's Licence. For these reasons the Panel, therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 10.41 am
having commenced at 10.10 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 28th July, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and Cllr R V Roud

Councillors Mrs S M Barker and D Keers were also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/36 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/37 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/38 APPLICATION FOR A HACKNEY CARRIAGE DRIVER LICENCE - CASE NO 08/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for a Hackney Carriage Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel was reminded that the Applicant had previously applied for a licence and had appeared before a Licensing and Appeals Panel on 24 September 2014, where his application had been refused.

The Panel had regard to the report of the Director of Central Services and to the Disclosure and Barring Service Certificate dated 11 April 2017

which disclosed that the Applicant had been convicted on 9 November 2012 for the offence of Wounding/Inflicting Grievous Bodily Harm on 4 May 2011 and had been sentenced to imprisonment for three years and given a restraining order – Protection from Harassment which would stay in force until 9 November 2022. The Panel also had regard to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that Public Safety was paramount when processing a prospective candidate to ensure that the applicant was a 'Fit and Proper' person to hold a licence;
- (2) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its own merits;
- (3) that a Disclosure and Barring Service check on a driver was seen as an essential safety measure in assessing whether or not an applicant is suitable to hold a licence;
- (4) that, with regard to previous convictions, the overriding consideration was the safety of the public although some discretion may be appropriate if the offence was isolated and there were mitigating circumstances; and
- (5) that Section 12.3 of the Policy stated that an application would normally be refused when it had been made within 8 years of the date of conviction for an offence of Grievous Bodily Harm.

The Panel listened carefully to the Applicant's explanation. Whilst the Applicant had sought to convince the Panel that he was a 'changed man' and requested a 'second chance', the Panel found that there was no compelling evidence or explanation provided which gave the Panel a reason to set aside the usual policy considerations in this case.

For these reasons the Panel, therefore

RESOLVED: That the application for a Hackney Carriage Driver's Licence be REFUSED.

The meeting ended at 11.20 am
having commenced at 11.05 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 28th July, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and Cllr R V Roud

Councillor D Keers was also present pursuant to Council Procedure Rule No 15.21.

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA 17/39 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/40 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/41 REVIEW OF A DUAL DRIVER'S LICENCE FOR HACKNEY CARRIAGE AND PRIVATE HIRE - CASE NO 09/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was to consider whether any action should be taken in respect of the holder of a Dual Driver's Licence for Hackney Carriage and Private Hire (Badge number 1699) following the receipt of information from Kent County Council Transport Integration (School Contracts Team) that the Driver had failed to comply with the terms of the contract and had used an unlicensed vehicle.

The Panel had regard to the report of the Director of Central Services, listened carefully to the Driver's explanation of the circumstances of the events which occurred on 28 April 2017 and accepted his explanation

that he had undertaken the journey in a private capacity. In addition the Panel had regard to the advice provided to the Licensing Officer by KCC's Transport Intergration Manager by telephone regarding the invoicing procedure for School Run contracts. The Panel took the opportunity to remind the Driver that journeys for hire or reward must be carried out in a licensed vehicle. The Panel, therefore

RESOLVED: That no action be taken against the holder of Dual Driver's Licence (Badge number 1699) as he had acted in a private capacity and not as a licensed Hackney Carriage or Private Hire Driver.

The meeting ended at 1.05 pm
having commenced at 12 noon

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 4th August, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs S M Barker and Cllr D Keers

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/42 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/43 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/44 REVIEW OF A DUAL DRIVER'S LICENCE FOR HACKNEY CARRIAGE AND PRIVATE HIRE - CASE NO 10/2017

(Reason: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider what action should be taken in respect of the Holder of a Dual Driver's Licence for Hackney Carriage and Private Hire (Badge No 118) following the receipt of information and CCTV footage from a licensed driver in Medway that the Dual Licence Driver had accepted a fare without a booking outside the Borough of Tonbridge and Malling on 25 February 2017.

The Panel had regard to the report of the Director of Central Services, the complaint received and the CCTV footage shown at the Hearing. In addition, the Panel had regard to the following elements of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy:-

- a. **Penalty for plying for hire without a licence** If the proprietor or part proprietor of any carriage, or any person so concerned as aforesaid, permits the same to be used as a hackney carriage plying for hire within the prescribed distance without having obtained a licence as aforesaid for such carriage, or during the time that such licence is suspended as hereinafter provided, or if any person be found driving, standing, or plying for hire with any carriage within the prescribed distance for which such licence as aforesaid has not previously obtained, or without having the number of such carriage corresponding with the number of the licence openly displayed on such carriage, every such person so offending shall for such offence be liable to a penalty not exceeding [level 4 on the standard scale].
- b. **'Hackney Carriage'** means a vehicle licensed under the Town Police Clauses Act 1847 to ply for hire throughout the district controlled by the Council.
- c. Hackney Carriage drivers may only ply for hire in a district where they are licensed. However they may undertake pre-booked work in any district.

The Panel listened carefully to evidence presented by the Driver and gave significant weight to the manner in which he had been treated by the other licensed drivers in this case. However, the Panel emphasised the seriousness of licensed drivers undertaking work that they were not entitled or licensed to do. The Panel also took into account a number of inconsistencies in the statement made by the Driver. For these reasons the Panel, therefore

RESOLVED: That the Dual Driver's licence for Hackney Carriage and Private Hire (15/01342/DUALDL) be suspended for a period of four weeks.

The meeting ended at 10.40 am
having commenced at 10.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 4th August, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs S M Barker and Cllr D Keers

Together with representatives of the Licensing Authority.

PART 1 - PUBLIC

LA 17/45 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/46 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/47 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 11/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for a Probationary Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS) that the Applicant had three convictions under the Social Security Administration Act 1992 S.111A and one conviction under the Fraud Act 2006 S.1(2)(B)+S.3 all dated 30 September 2014.

The Panel had regard to the report of the Director of Central Services and to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that Public Safety was paramount when processing a prospective candidate

to ensure that the applicant was a 'Fit and Proper' person to hold a licence;

- (2) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its merits;
- (3) that, with regard to previous convictions, the overriding consideration was the safety of the public although some discretion may be appropriate if the offence was isolated and there were mitigating circumstances;
- (4) that, with regard to Dishonesty, Drivers of Hackney Carriage and Private Hire vehicles were expected to be persons of trust. Members of the public entrust themselves to the care of drivers both for their own safety and for fair dealing. Passengers may comprise especially vulnerable people.
- (5) that Section 12.2.4 of the Policy stated that an application would normally be refused when it had been made within 4 years of receipt of a Conviction for Dishonesty.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the Convictions. The Panel stated that Private Hire drivers were entrusted to deal fairly and honestly with a broad section of the general public and that, in light of the previous convictions, it had no confidence that the Applicant would be able to do so.

The Panel was not convinced that the explanations given were sufficient to overturn the position set out in the Council's Policy and, having considered all the circumstances, the Panel was not satisfied that the Applicant was a fit and proper person to hold a Probationary Private Hire Driver's Licence. For these reasons the Panel, therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 11.40 am
having commenced at 11.00 am