

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 7th December, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr D Keers and Cllr R V Roud

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/80 DECLARATIONS OF INTEREST

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

LA 17/81 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 17/82 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 18/2017

(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 DBS Certificate dated 14 September 2017 had disclosed that the Applicant had received a Caution dated 26 November 2014 for Destroy or Damage Property (Value of Damage £5,000 or less) – Offence against Criminal Damage Act 1971 only on 25 November 2014.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 12.12.1 required that Cautions and Endorsable Fixed Penalties should be treated as though they were convictions and must be disclosed; and
- (4) that Section 12.1.2 of the Policy stated that an application would normally be refused where the applicant has a conviction of an offence of Criminal Damage and the conviction is less than 4 years prior to the date of the application.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the Caution. However, the Panel remained concerned that, given the nature of the incident giving rise to the Caution, public safety might be compromised by granting a licence within the 4 year period where the Policy indicated that an application would ordinarily be refused. For this reason the Panel was not satisfied that the Applicant would be a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 10.38 am
having commenced at 10.15 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 7th December, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr D Keers and Cllr R V Roud

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/83 DECLARATIONS OF INTEREST

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

LA 17/84 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 17/85 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 19/2017

(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 DBS Certificate dated 22 August 2017 had disclosed that the Applicant had received a Caution dated 7 April 2015 for Battery on 6 April 2015 – Criminal Justice Act 1988 S.39.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 12.12.1 required that Cautions and Endorsable Fixed Penalties should be treated as though they were convictions and must be disclosed; and
- (4) that, in respect of previous convictions, the offence of Battery was not specifically listed within Section 12.3 of the Policy. However, the offence was one which involved violence and the Panel was invited to consider the general policy listed at Policy Section 12.3.1 and the shorter 4-8 year period (within Section 12.3.2) for lower-order violent offences as the appropriate guideline when considering the application

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the Caution. However, there was no evidence presented which persuaded the Panel to depart from the general policy requirements. For this reason the Panel was not satisfied that the Applicant would be a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 11.24 am
having commenced at 11.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Monday, 5th February, 2018

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and Cllr Mrs B A Brown

Together with representatives of the Licensing Authority, Mr I Barwick (Applicant), Mr S Thomas (Solicitor to the Applicant), Mr C Beale (Noise Consultant to the Applicant), representatives of Kent Police, Environmental Health Services and Planning Services (Responsible Authorities), Mrs W Williams (on behalf of Offham Parish Council and as a local resident) and Mr T Berman, Mrs C Innes and Mrs V Patrick (local resident/interested party)

PART 1 - PUBLIC

LA 18/1 DECLARATIONS OF INTEREST

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

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

LA 18/2 APPLICATION FOR A NEW PREMISES LICENCE FOR AFRICAN LODGE AND MARQUEE, TOWER HILL, OFFHAM

The Panel gave consideration to an application for a Premises Licence made by Mr Ian Barwick under Section 17 of the Licensing Act 2003 in respect of premises known as African Lodge and Marquee, Kentfield Farm, Tower Hill, Offham. The application related to the Sale of Alcohol, Live Music, Recorded Music and Late Night Refreshment.

The Panel gave careful consideration to the written report of the Director of Central Services and Monitoring Officer, the application set out at Annex 3 to the report and the written representations received during the statutory consultation period (as set out at Annexes 6, 7, 8, 9 and 10 to the report). In addition the Panel had regard to the Noise Consultant's report (set out at Annex 11) and the Applicant's response to the written representations (set out at Annex 12 to the report).

The Panel listened carefully to the representations made by Mr S Thomas on behalf of Mr Barwick, Ms E Shaw on behalf of Kent Police, Mr P Thomason of the Environmental Protection Team, Ms E Keefe of Planning Services, Mrs W Williams on behalf of Offham

Parish Council and as a local resident and local residents, Mr T Berman, Mrs C Innes and Mrs V Patrick.

The Panel was mindful of its obligations under Section 18(3) of the Licensing Act 2003 which stated that, having regard to the relevant representations, the Licensing Authority must take such steps set out in Section 18(4) as it considers appropriate for the promotion of the licensing objectives. The Panel took into consideration the guidance dated April 2017 provided by the Secretary of State under s.182 of the Licensing Act 2003 as well as the Council's own Statement of Licensing Policy.

The Panel attached particular weight to the representations from local residents regarding noise, the report from Mr C Beale of SPL Track Environmental and the response of Mr P Thomason to that report.

The Panel was satisfied that the licensing objectives could properly be furthered with the imposition of mandatory conditions, conditions consistent with the operating schedule and those conditions agreed by the applicant with the Responsible Authorities (Kent Police and Tonbridge and Malling Borough Council Environmental Protection).

Having had regard to the above the Licensing and Appeals Committee, sitting as Panel, concluded that, in order to promote the Licensing Objectives, particularly the prevention of public nuisance, the application could be approved and, therefore,

RESOLVED: That the Premises Licence be granted subject to the mandatory conditions as set out in the Licensing Act 2003, such conditions as are consistent with the operating schedule accompanying the application and the following conditions:-

Section E	Performance of Live Music (indoors only) Monday until Sunday from 23:00 hours until 24:00 hours (midnight)
Section F	Playing of Recorded Music (indoors only) Monday until Sunday from 23:00 hours until 24:00 hours (midnight)
Section I	Provision of late night refreshment (indoors only) Monday until Sunday from 23:00 hours until 24:00 hours (midnight)
Section J	Supply of alcohol for consumption both on and off the premises Monday to Sunday from 11:00 hours until 24:00 hours (midnight)

Conditions:

1. There will be no more than 28 functions held at the location in any calendar year.
2. All functions will be pre-booked with number of persons attending and emergency contact details for the person booking recorded.
3. There will be no access to the venue from Tower Hill except in emergency situations.
4. Access routes to the venue will be clearly marked at any time that the venue is operating under this Premises Licence to ensure swift access and egress for all vehicles including private vehicles, taxis and emergency vehicles.
5. Clear instructions on gaining access to the venue will be provided to all persons holding events at the location.
6. Challenge 25 will be in operation and adhered to by all staff. This will be communicated to all persons holding events at the location at the time of booking.
7. Staff training will be provided for the sale of alcohol and safe operation of the venue, training will be recorded and signed by each member of staff.
8. CCTV will be in operation at the location at any time that the premises are being used for licensable activities.
9. Images from any CCTV in operation at the premises will be retained for a minimum of one month from the date of recording.
10. The maximum number of customers will be 200 for any given event.
11. No fireworks will be let off during any pre-booked event where licensable activities occur.
12. Performance loud speaker systems that have any bass component are only to be located in the African Lodge and not in the Marquee.
13. Performance loud speakers and the related performances will be directed to the south across the lake towards the Quarry and not into the Marquee.
14. Whenever entertainment is provided bass baffles will be fitted to the north open aspect of the African Lodge and behind any loudspeaker installation.

15. A noise limiter will be used to ensure that noise levels in the Lodge do not exceed 95dB(Aeq(15)) as recommended by the Code of Practice.
16. Performances in the Marquee must be restricted to acoustic instruments. Use of amplified equipment is acceptable but must be limited to background music or spoken word only.
17. The type of Performance loud speaker system is to be ascertained and approved by Mr Beale of SPL Track Environmental, on behalf of the applicant, and by a representative of Tonbridge and Malling Borough Council's Environmental Protection Team.
18. All events to be publicised in advance on Kentfield Farm's website. This to include the name and mobile 'phone number to contact in the event of any complaint. This person should be available to contact during the event. This information should also be provided to Offham Parish Council at least fourteen days in advance of an event.

LA 18/3 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 1.58 pm
having commenced at 10.10 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 16th February, 2018

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and
Cllr Mrs P A Bates

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 18/4 DECLARATIONS OF INTEREST

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

LA 18/5 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 18/6 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER
LICENCE - CASE NO 01/2018**

**(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 DBS Certificate, submitted with the application, had disclosed that the Applicant had received a conviction dated 17 February 2010 for Common Assault.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 5.7.5 of the Policy regarding the relevance of previous convictions required that the Council had regard to the following: whether convictions were spent or unspent, class of the offences, age of the offences and the apparent seriousness, as gauged by the penalty;
- (4) that Section 12.3.1 of the Policy stated that, in respect of violent offences, a period of 4 to 10 years conviction free was required before an application was considered favourably; and
- (5) that Section 12.12.1 required that Cautions and Endorsable Fixed Penalties should be treated as though they were convictions and must be disclosed.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the conviction. The Panel also took into account all previous convictions, regardless of the age of those convictions, when assessing whether the Applicant could be considered as a 'Fit and Proper' person to hold a licence. However, the Panel remained concerned that, given the nature of other offences which appeared on the DBS certificate, public safety might be compromised by granting a licence at this time. For this reason the Panel was not satisfied that the Applicant was a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 10.25 am
having commenced at 10.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 16th February, 2018

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and
Cllr Mrs P A Bates

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 18/7 DECLARATIONS OF INTEREST

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

LA 18/8 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 18/9 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER
LICENCE - CASE NO 02/2018**

**(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 DBS Certificate, submitted with the application, had disclosed that the Applicant had received 2 convictions dated 30 September 2013 for Resist or Obstruct Constable and Use disorderly behaviour or threatening/abusive/insulting words likely to cause harassment alarm or distress.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 5.7.5 of the Policy regarding the relevance of previous convictions required that the Council had regard to the following: whether convictions were spent or unspent, class of the offences, age of the offences and the apparent seriousness, as gauged by the penalty; and
- (4) that Section 12.3.2 of the Policy stated that, in respect of violent offences, an application would normally be refused if made less than 4 years after the date of conviction. If the application was made between 4 and 8 years after conviction more weight would be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the conviction. The Panel also took into account the Council's policy requirement that after four years from the date of conviction greater weight could be given to the evidence of good character provided by the Applicant and his current supervisor. The Panel noted that the Applicant appeared to have learned from his mistakes and had matured. For these reasons the Panel was satisfied that the Applicant was a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 11.30 am
having commenced at 11.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 16th February, 2018

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and
Cllr Mrs P A Bates

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 18/10 DECLARATIONS OF INTEREST

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

LA 18/11 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 18/12 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER
LICENCE - CASE NO 03/2018**

**(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 had produced a Disclosure and Barring Service (DBS) Certificate which had shown a Conviction dated 22 January 2018 for Harassment – put in fear of violence. The Applicant had failed to declare this on the questionnaire completed with the application.

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

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 12.3.1 of the Policy stated that, in respect of violent offences, a period of 4 to 10 years conviction free was required before an application was considered favourably; and
- (4) that Section 12.3.2 of the Policy stated that if an application was made between 4 and 8 years after the date of conviction more weight would be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the conviction. The Panel also took into account the Council's policy requirement that after four years from the date of conviction greater weight could be given to the evidence of good character provided by the Applicant and his father, who had accompanied him at the Hearing. The Panel noted that the Applicant appeared to have learned from his mistake and had been able to demonstrate a degree of responsibility as he already worked as a transport assistant escorting children to school each day. For these reasons the Panel was satisfied that the Applicant was a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 12.39 pm
having commenced at 12 noon

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Friday, 16th February, 2018

Present: Cllr Mrs J A Anderson (Chairman), Cllr O C Baldock and
Cllr Mrs P A Bates

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 18/13 DECLARATIONS OF INTEREST

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

LA 18/14 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 18/15 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER
LICENCE - CASE NO 04/2018**

**(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) and from the Driver and Vehicle Licensing Agency (DVLA).

The Panel was advised that the Applicant had failed to declare a conviction dated 10 March 2011 for Battery and a conviction dated 24 April 2012 – Failure to comply with the requirements of a community order.

The Panel was advised that the Applicant had submitted a DVLA data release mandate form to allow the Licensing Team to undertake an online check of his driving licence which had disclosed Offence dated

29 December 2016 for MS90 Failure to give information as to identity of driver etc. Causing or permitting offences. Using a vehicle uninsured against third party risks for which he had received 6 Penalty Points.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer 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 Section 5.7.5 of the Policy regarding the relevance of previous convictions required that the Council had regard to the following: whether convictions were spent or unspent, class of the offences, age of the offences and the apparent seriousness, as gauged by the penalty;
- (4) that Section 12.3.1 of the Policy stated that, in respect of violent offences, a period of 4 to 10 years conviction free was required before an application was considered favourably;
- (5) that Section 12.3.2 of the Policy stated that if an application was made between 4 and 8 years after the date of conviction more weight would be given to the circumstances of the offence and any evidence adduced to show good character since the date of conviction; and
- (6) that Section 12.7.2 of the Policy stated that an application would normally be refused where the Applicant has 6 or more penalty points on his DVLA licence.

The Panel listened carefully to the explanation of the circumstances surrounding the convictions on the DBS certificate and the penalty points issued by the DVLA. The Panel was dissatisfied with the explanation given by the Applicant regarding the DVLA points and were satisfied that the circumstances were of his own making. The Panel was concerned that the Applicant had failed to submit any evidence to indicate good character. In light of this the Panel felt that the full eight year period, as set out in the Policy, should elapse before an application could be considered. For these reasons the Panel was not satisfied that the Applicant was a 'Fit and Proper' person to hold a licence and, therefore,

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

The meeting ended at 1.38 pm
having commenced at 1.00 pm