

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

MINUTES

Friday, 10th September, 2021

Present: Cllr C Brown (Chairman), Cllr Mrs F A Kemp and Cllr R V Roud

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LAP 21/22 DECLARATIONS OF INTEREST

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

LAP 21/23 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

LAP 21/24 REVIEW OF PRIVATE HIRE DRIVER'S LICENCE – CASE NO. 05/2021

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

The Licensing and Appeals Committee, sitting as a Panel was asked to consider what action should be taken in respect of the holder of a Private Hire Vehicle Driver's licence after a DVLA driver's licence check had shown that penalty points had been awarded in 2019 for a CU80 driver offence – using a hand held mobile device whilst driving a motor vehicle on a road.

The Panel had regard to the report of the Director of Central Services and Deputy Chief Executive, the application form completed by the Driver for the renewal of a Private Hire Driver's licence and the DVLA Licence summary dated 18 March 2021 showing one endorsement for

6 penalty points, dated 23 June 2019 for “CU80 Breach of requirements as to control of the vehicle, mobile telephone etc”.

In addition, the Panel had regard to the TMBC Licensing Policy 2018-2023 with particular reference to:

- a. Licensing of Drivers and Vehicles - 1.4.4 – Public Safety is paramount when processing prospective candidate.
- b. Previous Convictions 12.13.1 – listed offences will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence.
- c. Previous Convictions 12.9.2 – an isolated conviction for an offence... will require careful consideration of the facts and will at the very least merit a warning as to future driving... Where [a] conviction is within 6 months prior to the application the application will normally be refused.
- d. Previous Convictions 12.14.1 – where an applicant has a conviction for using a hand-held mobile telephone or hand-held device whilst driving, a licence will not be granted until at least five years have elapsed since the conviction nor completion of any sentence or driving ban imposed.
- e. Private Hire Drivers conditions 14.1.21 – Drivers must not use a mobile phone whilst driving unless it is designed for hands-free operation.
- f. Penalty Points system P20 – failure to notify the Council of any amendment to the details of DVLA licence (change of personal details or points being given).

The Applicant failed to attend the Hearing. The Panel decided to proceed in his absence as the applicant had failed to respond to communications from the Licensing team on a number of occasions. The facts were considered to be straightforward and the Panel did not feel it needed to hear from the Applicant.

The Panel reviewed the papers submitted. The Applicant had received 6 penalty points on his licence for using a mobile telephone whilst driving. Whilst the Applicant had been dealt with at the roadside by the Police, the Panel considered that the relevant policy provisions with regard to previous convictions would apply. The Applicant admitted that he had been seen driving whilst on a mobile telephone and had accepted the penalty points.

The Panel considered that public safety was a paramount consideration and the Applicant's actions had endangered the public whilst driving. This fell well below the standard expected of a licenced driver. If this had been a new application as opposed to a renewal, the application

would have been refused as the incident occurred within the past five years. There was no good reason to depart from the policy in respect of the renewal, which would mean any application should have been refused until 2024.

In addition, the Applicant, who was licenced by the Council at the time the penalty points were received, had failed to notify the Council of this. The receipt of 6 penalty points would have required the Applicant to attend a hearing panel. Failure to notify the Council of this significant matter was an issue of concern.

For these reasons the Panel

RESOLVED: That the Applicant's current Private Hire Driver's Licence be revoked and the application for renewal of the licence be refused.

The meeting ended at 11.42 am
having commenced at 11.30 am