



Leicester
City Council

Minutes of the Meeting of the
LICENSING ENFORCEMENT SUB-COMMITTEE

Held: TUESDAY, 1 SEPTEMBER 2020 at 1:00 pm

P R E S E N T:

Councillor Singh Johal (Chair)

Councillor Cank

Councillor Thomas

Councillor Dr Moore

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85. APPOINTMENT OF CHAIR

RESOLVED:

That Councillor Singh Johal be appointed as Chair for the meeting.

The Chair outlined the procedure for the meeting to be followed and led on introductions.

86. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Shelton.

87. DECLARATIONS OF INTEREST

Members were asked to declare any interests they may have had in the business to be discussed.

Councillor Dr Moore declared that she was the ward Councillor for the applicant in the Personal Licence application at Appendix B3 to the report and had been approached by the applicant. The applicant had been told by Councillor Dr Moore that she was a Member on the Licensing Committee and referred the applicant to another Ward Councillor. After receiving legal advice it was agreed that Councillor Dr Moore would withdraw from the meeting when that agenda item was heard.

Councillor Singh Johal declared for the avoidance of doubt that he had been approached by the applicant in the Personal Licence application at Appendix B3 in the report, but the applicant had been informed by Councillor Singh Johal

that he was on the panel for the Licensing Hearing and had not engaged in conversation with him.

88. MINUTES OF PREVIOUS MEETING

RESOLVED:

That the minutes of the meeting of the Licensing Enforcement Sub-Committee held on 4 August 2020 be approved as a correct record.

89. PRIVATE SESSION

RESOLVED:

That the press and public be excluded during consideration of the following reports in accordance with the provisions of Section 100A(4) of the Local Government Act 1972, as amended, because it involves the likely disclosure of 'exempt' information, as defined in the Paragraphs detailed below of Part 1 of Schedule 12A of the Act, and taking all the circumstances into account, it is considered that the public interest in maintaining the information as exempt outweighs the public interest in disclosing the information.

Paragraph 1

Information relating to an individual.

Paragraph 2

Information which is likely to reveal the identity of an individual.

Paragraph 3

Information relating to the financial affairs of any particular person (including the authority)

- B1) Application for the Renewal of a Hackney Carriage and Private Hire Vehicle Driver's Licence
- B2) Personal Licence Review Application
- B3) Personal Licence Review Application

90. APPLICATION FOR THE RENEWAL OF A HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLE DRIVER'S LICENCE

The Director of Neighbourhood and Environmental Services submitted a report concerning the application for the renewal of a Hackney Carriage and Private Hire Vehicle Driver's Licence.

The applicant was present with a Union Representative. The Licensing Team Manager, Licensing Enforcement Officer, and Legal Adviser were also present at the meeting.

Introductions were made and the Chair outlined the procedure of the meeting to those present.

The Licensing Team Manager outlined the details of the application, including the relevant City Council Policy Guidelines and drew Members' attention to the conviction referred to in the report.

The applicant and his representative set out the reasons why they thought his application to renew his Hackney Carriage and Private Hire Driver's Licence should be granted and answered questions from Members.

All parties were then given the opportunity to sum up and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced and confirmed in writing within five working days. The Chair informed the meeting that the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officer to disconnect from the meeting. The Sub-Committee then deliberated in private in order to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the application to renew the Hackney Carriage and Private Hire Vehicle Driver's Licence be REFUSED.

It was noted that the hearing of the application was held virtually in accordance with the Local Authorities and Police and Crime Panel (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales)(Regulations) 2020 (The 2020 Regulations) and in accordance with the Council's own Remote Procedure Rules.

REASON FOR THE DECISION

Members of the Sub-Committee had carefully considered the committee report placed before them. They had taken into account, where appropriate, the Department for Transport's "Statutory Taxi & Private Hire Vehicle Standards", the Regulators' Code and the Council's "Guidelines on relevance of convictions

of Hackney Carriage and Private Hire Vehicle Drivers”. Members had also taken account of the oral and written representations.

Members of the Sub-Committee noted that save for the matter which now brought the applicant before the Committee, there was no history of any earlier complaints against him.

Members were informed the applicant had been a licensed Hackney Carriage and Private Hire Vehicle driver since 07 August 2008. The applicant’s Licence detailed the following on the title page of the document: “The licence holder must contact the Licensing Section immediately if you are reported or convicted of any offences, including endorsements on your Driving Licence. Failure to do this will result in your renewal application being delayed.”

The applicant had a criminal conviction for failing to give information as to the identity of a driver (MS90) on 04 August 2017, in respect of which he was fined and his DVLA Driver’s Licence was endorsed with 6 penalty points.

The Licensing Section had not yet received the applicant’s enhanced DBS check certificate and as such, the Committee had not yet been provided with written confirmation of the date of the conviction.

The applicant informed the Committee that he was not aware of the offending / conviction when he applied to renew his Hackney Carriage and Private Hire Vehicle Driver’s Licence on 14 August 2017 and in the circumstances, he could not declare the matter on that renewal application. Rather, the applicant indicated he had become aware of the conviction when he attended the Magistrates’ Court on 11 May 2018. However, he did not thereafter immediately, or at any time, notify the Licensing Section of the conviction.

On 2 October 2018 the applicant notified the Licensing Section by letter of a change of address. However, he did not take the opportunity to notify details of the conviction.

The applicant did not declare the conviction in his current renewal application submitted on 29 July 2020. In that application he incorrectly indicated that he had not been reported for, charged with or convicted of any offences. He had signed a declaration as to the correctness of the information he had provided.

Members had listened carefully to the applicant’s explanation for his omissions as originally set out in a letter dated 17 August 2020 from his representative. However, Members found the failure by the applicant to notify the details of the conviction at the correct time (or at any time) and thereafter, in the current renewal application, the provision of incorrect information and the signing of an incorrect declaration of correctness, in the circumstances presented to Members in this case, constituted ‘any other reasonable cause’ under section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and that it was appropriate to refuse to renew the Licence.

In failing to declare the conviction to the Licensing Section at the correct time,

the applicant avoided being dealt with by Committee at that time in accordance with the Council's "Guidelines on relevance of convictions". Those Guidelines provided, in the absence of exceptional circumstances, for a period of 2 years free from conviction for such offending, which would have potentially meant revocation of the applicant's Hackney Carriage and Private Hire Vehicle Driver's Licence at the time.

The applicant repeated the omission in his current renewal application and had signed an incorrect declaration of correctness.

Members therefore refused to renew the Licence.

The applicant would be informed that he would have 21 days to appeal the decision to the Magistrate's Court should he wish to do so.

91. PERSONAL LICENCE REVIEW APPLICATION

The Director of Neighbourhood and Environmental Services submitted a report that required Members to determine an application for the review of an existing Personal Licence.

The applicant was present. The Licensing Team Manager, Licensing Enforcement Officer, and Legal Adviser to the Sub-Committee were also present.

Introductions were made and the Chair outlined the procedure of the meeting to those present.

The Licensing Team Manager outlined details of the application including the relevant City Council Guidelines and drew Members' attention to the conviction for a relevant offence referred to in the report.

The applicant was given the opportunity to make a representation and answered questions from the Sub-Committee.

All parties were then given the opportunity to sum up and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced in writing within five working days. The Chair informed the meeting the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officers to disconnect from the meeting. The Sub-Committee then deliberated in private to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the Personal Licence be REVOKED.

It was noted that the hearing of the application was held virtually in accordance with the Local Authorities and Police and Crime Panel (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales)(Regulations) 2020 (The 2020 Regulations) and in accordance with the Council's own Remote Procedure Rules.

REASON FOR THE DECISION

Members of the Sub-Committee had carefully considered the committee report placed before them. Members of the Sub-Committee had listened carefully to all the representations and had taken account of the Statutory Guidance, the Regulators' Code and the Council's Licensing Policy.

Members of the Sub-Committee were informed that on 26 July 2019, the Council issued a Personal Licence to the Personal Licence Holder (PLH). Subsequent to the grant, the PLH was convicted on 08 October 2019 at Leicester Magistrates Court of an offence contrary to section 5 of the Road Traffic Act 1988, of driving or being in charge of a motor vehicle on a road or other public place on 19 September 2019, with an alcohol concentration above the prescribed limit, namely 45 micrograms per 100 millilitres of breath, the legal limit being 35.

The conviction was a relevant offence as listed in Schedule 4 of the Licensing Act 2003. The conviction was not spent for the purposes of the Rehabilitation of Offenders Act 1974 and therefore gave ground for suspension or revocation of the PLH's Personal Licence under section 132A(3)(b) of the Licensing Act 2003. A Personal Licence authorised an individual to supply alcohol, or authorised the supply of alcohol, in accordance with a Premises Licence.

The Council's Licensing Policy detailed: "The Licensing Authority recognises the important role that personal licence holders have to play in the promotion of the licensing objectives at premises selling alcohol. For this reason, personal licence holders are required to have prescribed training and not have relevant convictions that would indicate their unsuitability".

Members had taken account of the PLH's personal circumstances. Members noted that while the PLH had previously been a Designated Premises Supervisor at the premises detailed in the report, he no longer held that position and was not involved with the premise. Members also noted that the PLH had completed a Drink Drive Rehabilitation Course. Members had heard

the PLH's explanation of the offending and his assurance that it would not be repeated.

However, the PLH's offending clearly demonstrated his unsuitability to hold a Personal Licence.

The Member's decision was that, to promote the licensing objectives, it was appropriate to revoke the Personal Licence under section 132A(3)(b) of the Licensing Act 2003.

The PLH would be informed that he would have 21 days to appeal the decision to the Magistrates Court should he wish to do so.

At this point Councillor Moore left the meeting.

92. PERSONAL LICENCE REVIEW APPLICATION

The Director of Neighbourhood and Environmental Services submitted a report that required Members to determine an application for the review of an existing Personal Licence.

The applicant was present. The Licensing Team Manager, Licensing Enforcement Officer, and Legal Adviser to the Sub-Committee were also present.

The Licensing Team Manager outlined details of the application including the relevant City Council Guidelines and drew Members' attention to the conviction for a relevant offence referred to in the report.

The applicant was given the opportunity to make a representation and answered questions from the Sub-Committee.

All parties were then given the opportunity to sum up and make any final comments.

The Sub-Committee received legal advice from the Legal Adviser to the Sub-Committee in the presence of all those present.

In reaching their decision, Members felt they should deliberate in private on the basis that this was in the public interest, and as such outweighed the public interest of their deliberation taking place with the parties represented present.

The Chair announced that the decision and reasons made during private deliberation would be publicly announced in writing within five working days. The Chair informed the meeting the Legal Adviser to the Sub-Committee would be called back to give advice on the wording of the decision.

The Chair then asked all but Members of the Sub-Committee and Democratic Support Officers to disconnect from the meeting. The Sub-Committee then deliberated in private to consider their decision.

The Sub-Committee recalled the Legal Adviser to the Sub-Committee to give advice on the wording of the decision.

RESOLVED:

That the Personal Licence be **SUSPENDED FOR SIX MONTHS**

It was noted that the hearing of the application was held virtually in accordance with the Local Authorities and Police and Crime Panel (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales)(Regulations) 2020 (The 2020 Regulations) and in accordance with the Council's own Remote Procedure Rules.

REASON FOR THE DECISION

Members of the Sub-Committee had listened carefully to all the representations and had taken account of the Statutory Guidance, the Regulators' Code and the Council's Licensing Policy.

The Sub-Committee members heard that on 21 October 2015, the Council issued a Personal Licence to the Personal Licence Holder (PLH). Subsequent to the grant, the PLH was convicted on 20 December 2019 at Leicester Magistrates Court, of an offence contrary to section 5 of the Road Traffic Act 1988, of driving or being in charge of a motor vehicle on a road or other public place on 26 April 2019, with an alcohol concentration above the prescribed limit, namely 109 milligrammes per 100 millilitres of blood, the legal limit being 80. The conviction was a relevant offence as listed in Schedule 4 of the Licensing Act 2003. The conviction was not spent for the purposes of the Rehabilitation of Offenders Act 1974 and therefore gave ground for suspension or revocation of the Personal Licence under section 132A(3)(b) of the Licensing Act 2003. Members were informed that a Personal Licence authorised an individual to supply alcohol, or authorised the supply of alcohol, in accordance with a Premises Licence.

The Council's Licensing Policy detailed: "The Licensing Authority recognises the important role that personal licence holders have to play in the promotion of the licensing objectives at premises selling alcohol. For this reason, personal licence holders are required to have prescribed training and not have relevant convictions that would indicate their unsuitability".

The PLH's offending clearly brought into question his suitability to hold a Personal Licence.

The Members of the Sub-Committee noted the PLH's history in the regulated economy as a result of which he should have been fully aware of the ramifications of his offending. However, Members had taken account of the PLH's personal circumstances. Members noted the PLH was also a Designated Premises Supervisor for three premises in Leicester, positions that required him to hold a Personal Licence. The PLH had completed a Drink Drive Rehabilitation Course. Members also noted the character references submitted

on the PLH's behalf and Members had heard his explanation of the offending and his assurance that it would not be repeated.

In those circumstances, to promote the licensing objectives, Members of the Sub-Committee felt that it would be appropriate, in this case, to suspend the Personal Licence for a period of six months, which would emphasise the importance of future compliance by the PLH and should thereby reinforce his resolve.

As Members of the Sub-Committee did not, at this stage, propose to revoke the Personal Licence, notice would be given under section 132A(10) of the Licensing Act 2003 to the Chief Officer of Leicestershire Constabulary inviting representations regarding whether the Personal Licence should be suspended or revoked having regard to the crime prevention objective.

Leicestershire Constabulary may make representations within the period of 14 days beginning with the day the notice was received. The Committee would thereafter consider the matter again and reach a decision.

Minute Update 24 September 2020

Members originally considered the matter on 1st September 2020 when they felt that it would be appropriate to suspend the applicant's Personal Licence for a period of six months. As Members had not at that time proposed to revoke the Licence, notice was given on 4th September 2020 to the Chief Officer of Leicestershire Constabulary under section 132A(10) of the Licensing Act 2003 inviting representations within 14 days regarding whether the Licence should be suspended or revoked having regard to the crime prevention objective.

Leicestershire Constabulary responded indicating that it did not wish to submit a representation in relation to the matter.

Members had taken account of all the representations previously made, the response from Leicestershire Constabulary, the Statutory Guidance, the Regulators' Code and the Council's Licensing Policy.

Members' decision, made under section 132A(12) of the Licensing Act 2003, was that to promote the licensing objectives it was appropriate in this case, for the reasons previously indicated on 1st September 2020, to suspend the applicant's Personal Licence for a period of six months.

The applicant may appeal the decision to the Magistrates' Court within the period of 21 days beginning with the day on which he was notified of the decision. The suspension would not have effect until the end of that 21-day period, or if the decision was appealed against, until the appeal was disposed of.

93. ANY OTHER URGENT BUSINESS