

NORTHAMPTON BOROUGH COUNCIL

TAXI & GENERAL LICENSING COMMITTEE

Tuesday, 10 September 2019

PRESENT: Councillor Flavell (Chair); Councillor Sargeant (Deputy Chair);
Councillors Ansell, Beardsworth, Davenport, Duffy, Haque and
Larratt

OFFICERS: Jason Toyne (Senior Licensing Enforcement Officer), Clive Tobin
(Licensing & Litigation Solicitor), Suraj Samant (Democratic Services
Officer)

1. APOLOGIES

Apologies were received from Councillor G Eales.

2. MINUTES

The minutes were noted as copy to follow.

3. DEPUTATIONS/PUBLIC ADDRESSES

There were none.

4. DECLARATIONS OF INTEREST

Councillor Haque declared a personal interest in item number 9.

**5. MATTERS OF URGENCY WHICH BY REASON OF SPECIAL
CIRCUMSTANCES THE CHAIR IS OF THE OPINION SHOULD BE
CONSIDERED**

There were none.

6. EXCLUSION OF PUBLIC AND PRESS

The Chair moved that the Public and Press be excluded from the remainder of the meeting on the grounds that there was likely to be disclosure to them of such categories of exempt information as defined by Section 100I of the Local Government Act 1972 as listed against such items of business by reference to the appropriate paragraph of Schedule 12A to such Act. Specifically the reports disclosed information relating to the identity of individuals and action taken in relation to the investigation of crime.

The Motion was carried and the public and press were excluded on the basis that information relating to an individual and information which was likely to identify an individual and investigation of crime were contained in the reports.

7. REVIEW OF A PRIVATE HIRE DRIVER LICENCE

The Senior Licensing Enforcement Officer outlined the circumstances as set out in the report. The Committee heard that the Licence Holder was caught plying for hire as part of an operation by Licensing Enforcement Officers working in partnership with Northamptonshire Police's Safer Roads Team.

In response to questions asked by Members of the Committee the Licence Holder stated:

- a) He had not asked the officers their names as he usually makes pick-ups near the office without having to know the person's name;
- b) He accepted and apologised for his behaviour;
- c) He had attended the Safety Awareness Course and understood that he may not be insured;
- d) The officers had already got into his vehicle before asking whether he was free;
- e) He has not plied for hire since the occasion in October and there would not be a repeat of the incidents.

Members received legal advice on the following:

- 1) That the case of *McCool v Rushcliffe* is relevant in determining whether the Licence Holder remains 'a fit and proper person' to hold a private hire driver's licence or whether there are grounds to suspend or revoke his licence:

"One must, as it seems to me, approach this case bearing in mind the objectives of this licencing regime which is plainly intended, among other things, to ensure so far as possible that those licenced to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest (which is the material word for the purposes of the present case), and not persons who would take advantage of their employment to abuse or assault passengers".

- 2) Plying for hire without the appropriate licences breaches the 1976 Act and the Town Police Clauses Act 1847 however, case law states that there is no need for a conviction before the powers in section 61 can be used.
- 3) That the applicant's personal circumstances are generally irrelevant to the question of whether they are fit and proper save to the extent that they explain how the offences came to be committed or demonstrate other aspects of their character which make them fit and proper. The member's role is to protect the public.
- 4) That case law states that the construction of a private hire driver's insurance policy must be considered in order to determine whether they are covered whilst plying for hire.
- 5) The options available to the Committee are set out in the report, namely to suspend or revoke the licence, take no action or, if they do not feel that they have enough information, to adjourn the hearing of this matter.

Members retired at 18:18 to make a decision.

The meeting reconvened at 18:33.

RESOLVED:

The Committee had carefully considered the information in the report, the representations made by the Licence Holder at the hearing and the responses to the questions asked of him.

The Committee made the following findings:

- A. That he had plied for hire on the night in question and had not asked the officers if they were booked as passengers. This was the second occasion on which he had been caught doing so.
- B. He had accepted he had plied for hire on that occasion and the previous occasion.
- C. He had attended the Safety Awareness Course and was aware of the risks of doing so.
- D. No other matters have occurred since however, there is the earlier matter in relation to failing to display his vehicle plate.
- E. He had apologised for his behaviour.

Accordingly, the Committee **SUSPENDS** the Licence Holder's private hire driver's licence for a period of 8 weeks. The members were concerned as to the failure to take notice of the advice offered on the Safety Awareness Course and the potential risks to passengers if he were to be involved in an accident whilst not insured. They also warned him that if he appears before them again for another such offence he could face a longer period of suspension and possibly even revocation of his licence.

8. APPLICATION FOR A PRIVATE HIRE DRIVER LICENCE

The Chair, Councillor Flavell asked the Senior Licensing Enforcement Officer to present the report.

The Senior Licensing Enforcement Officer presented the report.

The applicant had applied for a private hire driver's licence and as part of the application process had declared previous convictions. His Disclosure and Barring Service Check revealed he had been committed of offences of Criminal Damage, Battery and Breach of a Non-molestation Order between 2014 and 2016.

The applicant stated that the Criminal Damage and Battery Convictions related to an occasion when his former partner called him as she was being threatened by a man however, when he arrived at the location his former partner was crying and said that the man hit her. The man was walking towards his car so the applicant tried to use his own car to stop him driving away. The vehicles collided causing the damage. There was then a minor scuffle which amounted to the assault. The applicant accepted that this was the wrong reaction and it would have been better for him to call the police.

In response to questions from Members of the Committee the applicant stated:

- a) He did not know the man involved in the offence in June 2014 and simply responded to his former partner's request to help him as she was scared;
- b) In relation to the incident in 2016, after separating from his partner he moved to another town and wanted nothing to do with her. She had a grudge against him and

caused trouble;

- c) The three points on his DVLA Licence were for being stationary in a yellow box at some traffic lights;
- d) His convictions led to him losing his contract to work as an interpreter with the Immigration Service and loss of a further contract with the military.

Members received legal advice on the following:

- 1) That the case of *McCool v Rushcliffe* is relevant in determining whether the applicant is 'a fit and proper person' to hold a private hire driver's licence and states:

"One must, as it seems to me, approach this case bearing in mind the objectives of this licencing regime which is plainly intended, among other things, to ensure so far as possible that those licenced to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest (which is the material word for the purposes of the present case), and not persons who would take advantage of their employment to abuse or assault passengers".

- 2) That an applicant's personal circumstances are generally irrelevant to the question of whether they are fit and proper save to the extent that they explain how the offences came to be committed or demonstrate other aspects of their character which make them fit and proper.
- 3) The member's role and the purpose of the licensing regime is to protect the public and this should be at the forefront of their minds when deciding on the application.
- 4) The options available to the Committee are set out in the report, namely to grant the licence, refuse to grant the licence or, if they do not feel that they have enough information, to adjourn the hearing of this matter.

RESOLVED:

The Committee had carefully considered the information in the report, the representations made by the applicant at the hearing and the responses to the questions asked of him.

The Committee made the following findings:

- A. There were a number of matters recorded against the applicant.
- B. These were serious and breached the Council's Guidelines on Convictions.
- C. He accepted these had occurred and explained the background to them.
- D. There has been a three year period with no further offences.
- E. It is accepted that the applicant does not present a risk to the public.

Accordingly, the Committee **GRANTS** the private hire drivers licence.

9. APPLICATION FOR A PRIVATE HIRE DRIVER LICENCE

The Chair asked the Senior Licensing Enforcement Officer to present the report.

The Senior Licensing Enforcement Officer presented the report to the Committee.

The applicant was previously licensed as a Private Hire Driver, from 2015 and subsequently expired in 2019. On 17 May 2017 an email was received confirming that, with immediate effect, he could not undertake any NCC Duties or work involving transport of either Children or Vulnerable Adults. On 18 May 2017 a Common Law Police Disclosure from Northamptonshire Police informed the Licensing Department that the applicant was under investigation for inappropriate comments and behaviour whilst conveying a child on a school contract.

The disclosure stated that the applicant was acting in his capacity as a taxi driver when transporting a vulnerable person and made inappropriate comments to the child. The applicant also engaged in inappropriate text messages to the child.

As a result of the Police information, on 18 May 2017 the applicant's Private Hire Drivers licence was suspended with immediate effect. He subsequently returned his Private Hire Driver's badge to the Licensing Department.

A meeting of Northamptonshire's Local Safeguarding Children's Board was convened to consider the allegations against the applicant. The meeting decided he could not be used on any NCC Duties involving transport of Children or Vulnerable Adults until further notice.

On 28 November 2018 the applicant informed the Licensing Department that the Crown Prosecution Service had discontinued the case against him, providing a copy of the notice of discontinuance, also requesting that the suspension of his Private Hire Licence should be lifted. The Licensing Department pointed out that the incident was still under investigation and, once resolved he may re-apply for his licence and his application would be put before the Licensing Committee to decide his fitness and propriety to be licensed.

On 29 November 2018 a further Safeguarding meeting reviewed the investigation. The meeting concluded that the allegations against the applicant were substantiated and that he was a risk to vulnerable persons. On 3 December 2018 the Licensing Department sent a letter to the applicant outlining the review meeting on 29 November, explaining that the allegation had been recorded as substantiated and as a result would be referred to the Disclosure & Barring Services (DBS). It was also pointed out at that time that the suspension of his Private Hire Driver's licence remained in force pending further enquiries by the Council.

Members received legal advice on the following:

- 1) That the case of *McCool v Rushcliffe* is relevant in determining whether the applicant remains 'a fit and proper person' to hold a private hire driver's licence or whether there are grounds to suspend or revoke his licence:

"One must, as it seems to me, approach this case bearing in mind the objectives of this licencing regime which is plainly intended, among other things, to ensure so far as possible that those licenced to drive private hire vehicles are suitable persons to do so, namely that they are safe drivers with good driving records and adequate experience, sober, mentally and physically fit, honest (which is the material word for the purposes of the present case), and not persons who would take advantage of their employment to abuse or assault passengers".

- 2) That the applicant's personal circumstances are generally irrelevant to the question of whether they are fit and proper save to the extent that they explain how the offences came to be committed or demonstrate other aspects of their character which make

them fit and proper.

- 3) The purpose of the licensing regime and the member's role is to protect the public and they should make their decision with this in mind.
- 4) That the previous licence which was suspended by officers has expired and therefore the matter before them is a new application for grant of a licence.
- 5) The options available to the Committee are set out in the report, namely to grant the licence, refuse to grant the licence or, if they do not feel that they have enough information, to adjourn the hearing of this matter.
- 6) That case law states that there is no need for a conviction for an offence and that the committee may consider on the civil standard, i.e. the balance of probabilities, whether they believe the incidents occurred.

RESOLVED:

The Committee had carefully considered the information in the report, the representations made by and on behalf of the applicant at the hearing and the responses to the questions asked of him. They were of the view however, that the allegations were substantiated and that he presented a risk to the public.

Accordingly, the Committee **REFUSES** the application for a private hire driver's licence.

The meeting concluded at 8:05 p.m.