

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

LICENSING AND APPEALS BOARD – PANEL HEARING

**Minutes of a Meeting of a Panel of the Licensing & Appeals Board
on Tuesday 4th June 2013 at 9.30am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor D Tyler (Chairman), Councillor C Sampson
and Councillor T Wright

OFFICERS PRESENT:

Rachael Edwards - Senior Democratic Services Officer
John Gilbraith - Licensing Manager

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB007/13

1. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

2. Consideration of a Grant of Combined Drivers Licence

The Chairman welcomed everyone to the meeting and introduced the Panel, officers and the Legal Advisor. The applicant was present at the hearing accompanied by his representative and his potential employer who confirmed that he would be offering the applicant employment should the Panel determine to grant him a licence.

The Legal Advisor outlined the procedure that would be followed at the hearing. She explained that it was for the Panel to determine whether it deemed the applicant to be a fit and proper person to be granted a Combined Driver's Licence. There were no questions from the applicant or his representative in relation to the procedure.

At the invitation of the Chairman, the Licensing Manager presented his report and explained that the Borough Council of King's Lynn & West Norfolk received an application for a Combined Driver's Licence from the applicant in April 2013. Because of the circumstances in which the driver's previous Combined Driver's

Licence application had been refused his current application had been referred to a Panel of the Licensing & Appeals Board for determination.

The Licensing Manager explained that the applicant had previously held a Combined Driver's Licence issued by the authority between the 10th May 2011 and 9th May 2012. During this licence period, the Borough Council had received three separate complaints regarding his standard of driving all relating to the same incident. In addition, during the same period the applicant had displayed a disregard for the Borough Council's licensing conditions.

In June 2012, a Panel of the Licensing & Appeals Board considered the applicant's renewal application and its decision was not to renew his Combined Driver's Licence. The reasons for the Panel's decision were outlined by the Licensing Manager. A copy of the agenda for the hearing held in June 2012 had been attached at Appendix 1 and a copy of the decision sheet had been attached at Appendix 2. The Licensing Manager referred to the copy of the minutes that had also been attached at Appendix 3 and highlighted that the driver had generated a disproportionate catalogue of breaches of the Council's Licensing Conditions and Procedures.

The Licensing Manager advised that it was for the Panel to determine whether the applicant could demonstrate his attitude/character had changed and that he was now a fit and proper person to hold a licence.

There were no questions from the applicant, his representative or Members of the Panel to the Licensing Manager.

At the invitation of the Chairman, the applicant's representative presented their case and explained to the Panel the applicant's personal circumstances (in terms of how it differed from the previous year) and that he did now acknowledge that his standards had fallen below that which was required of a licensed driver. The applicant had the offer of employment and the use of a wheelchair accessible vehicle. The applicant's representative also explained that they had spent some time with the applicant in explaining the licensing conditions and procedures as well as providing some guidance as to the assistance that wheelchair passengers may require. He believed that the applicant deserved a second chance and as a licenced driver, he would be an asset to the Borough.

In response to questions raised by the Licensing Manager, the applicant explained the type of work he had undertaken since his last appearance before a Panel. He also explained, why, in his opinion, he felt he should be granted a licence and as a result of a change in his personal circumstances, his priorities had changed. He acknowledged that he had "stretched the truth" previously in his dealings with the Council but realised that the Council was there to offer support and guidance. The applicant's representative also reiterated that the applicant would be provided with a suitable vehicle and his potential employer would take on the responsibility for administration matters such as insuring and licensing the vehicle.

In response to a question raised by the Legal Advisor as to whether the applicant accepted that he had previously driven dangerously and failed to comply with a

number of the Council's Licensing Conditions and Procedures, the applicant confirmed that he acknowledged that this had been the case.

The applicant's potential employer spoke in support of the applicant whom he had known for a number of years. He stated that he concurred with the views expressed by the applicant's representative and also felt that the applicant had matured and now had a more responsible approach. He also explained that he had previously employed the applicant who had always been helpful and friendly and there had been no complaints received about him in relation to the work that he had undertaken. A letter of support from the co-owner of the company was also made available (albeit the Panel did not request a copy).

In response to a question raised from Councillor Sampson, the applicant's representative explained the type of work that the applicant would undertake, the majority would be carrying wheelchair passengers, he would however on some occasions take able bodied passengers.

The Licensing Manager summed up his case and reminded the Panel that the Borough Council should only authorise hackney carriage and private hire licences when it was satisfied that the applicant was "fit and proper" to hold such a licence. The Panel should be aware that any matter could be taken into consideration when determining 'fit and proper'. Whilst there was no judicially approved test for fitness and propriety he advised that the Panel may find the following test useful:

'Would you (as a member of the Licensing & Appeals Board charged with the ability to authorise a combined driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or grand-daughter or any other person for whom you care, to get into a vehicle with this person alone?'

If the answer to the question was an unqualified 'yes', then the test was probably satisfied. If there were any doubts, then further consideration should be given as to whether the person was a fit and proper person to hold a Combined Driver's Licence.

The Licensing Manager requested that the Panel consider the contents of the report, including any submissions put forward by the driver and dispose of the matter by either granting or refusing the application. The Panel was reminded that full reasons for its decision must be given as there was provision for appeal to the Magistrates' Court against that decision.

The applicant's representative summed up his case reiterating that he believed that the applicant was a "changed person" and would be an asset to the Borough if the Panel was minded to grant the application.

The Legal Advisor addressed the Panel and advised that the Panel had to determine whether it considered the driver to be a "fit and proper" person to be granted a Combined Driver's Licence. She advised the Panel that it also needed to consider the issue of public protection as the driver was in a position of trust and would be expected to be able to deal with difficult and challenging situations as

well as potentially vulnerable passengers. Members of the public needed to be satisfied that they would be driven safely and in accordance with the law. The Legal Advisor referred to the previous complaints that had been received and the problems that the applicant had experienced in complying with the necessary licensing conditions and procedures which had resulted in their renewal application being refused a year ago. The Panel had to give consideration to the submissions put forward by the applicant and his representative (and potential future employer) including his acknowledgement that they had not always been honest with the licensing section etc. In conclusion, the Legal Advisor advised that the Panel had to balance, under the Human Rights Act, a person's right to earn a living against the protection of the public.

The Chairman advised that the Panel would retire to consider its decision with the Legal Advisor and Senior Democratic Services Officer (for legal and administrative purposes only and neither would take part in the decision making process).

The Panel retired and considered its decision in private. On returning, the Chairman announced the decision and reasons for the decision.

The meeting closed at 10.50am