

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 12th February 2013 at 10am
in the Committee Suite, King's Court, King's Lynn**

PRESENT:

Councillor Garry Sandell (Chairman), Councillor Richard Bird
and Councillor Mrs Stephanie Smeaton

OFFICERS PRESENT:

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

LEGAL ADVISOR: - Cara Jordan

CASE NUMBER – LAB003/13

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 adjourned the hearing in order for the Panel to read a reference and a statement from the applicant's wife which the applicant had tabled at the beginning of the hearing.

On reconvening, the Chairman welcomed everyone to the meeting and introduced the Panel, officers and the Legal Advisor. The applicant was present at the hearing.

The Legal Advisor outlined the procedure that would be followed at the hearing. It was confirmed that neither the Council or the applicant were calling witnesses. The Legal Advisor explained that it was for the Panel to determine whether they 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 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 had

received an application for a Combined Driver's Licence from the applicant in December 2012. Because of matters revealed on his Disclosure & Barring Service (DBS) Enhanced Certificate, their application had to be referred to a Panel of the Licensing & Appeals Board for determination.

The applicant's DBS Enhanced Certificate dated the 7th January 2013 showed that they were convicted in December 2010 for an offence of 'battery'. Fenland Magistrates' Court imposed a community order, costs of £105, compensation of £150 and 60 hours unpaid work. Attached at Appendix 1 to the report was 'relevant' information that had been provided by Cambridgeshire Constabulary in connection with the conviction. The Licensing Manager outlined this information to the Panel.

Attached at Appendix 2 was a copy of a letter from the Independent Safeguarding Authority which the applicant had provided with their application. The Licensing Manager highlighted the paragraph which stipulated that "our decision has no bearing on any decision that a prospective employer may make in future not to employ you. It will be for the prospective employer to decide, on the basis on information gathered from references, criminal record checks and other relevant sources of recruitment information, whether or not to employ you or otherwise to make use of your services".

The Borough Council had previously adopted guidelines relating to the relevance of convictions and a copy of these guidelines had been attached to the report at Appendix 3. Members of the Panel were made aware of the example provided at paragraph 3(f) of the guidelines relating to violence, where it stated that:

'a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.'

The Borough Council should only authorise hackney carriage and private hire licences when they were 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 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 this 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 either grant or refuse the application. However, grounds must be given for their action, as there was provision for appeal to the Magistrates' Court against that decision.

The Licensing Manager brought to the attention and circulated to the Panel and the applicant a copy of some images that had been posted on the applicant's Facebook page.

There were no questions from the applicant to the Licensing Manager.

In response to questions raised by the Chairman, the Licensing Manager confirmed that the images circulated were freely available for any member of the public to access. The applicant took the opportunity to explain that other than one of the images, the rest had been sent to him and therefore he had little control over the content.

The applicant presented his case and at the request of the Chairman, he read out a copy of his statement that he had submitted as part of his evidence in advance of the hearing. The applicant stated that he regretted the incident which had also upset him. He explained that he was a family man and that the details revealed on his DBS Enhanced Certificate in no way reflected the type of person he was and that he had actually submitted a challenge to the Disclosure & Barring Service.

The applicant responded to questions from the Licensing Manager and confirmed that he had held a taxi licence with Fenland District Council which had been valid until the 27th February 2005. The applicant responded to questions in relation to his statement and subsequent court case and what he deemed to be mitigating circumstances in relation to the incident that had resulted in his conviction. The Licensing Manager advised that it was not for the Panel to look behind the reasons for the conviction as the applicant had pleaded guilty. The applicant confirmed that his application to Norfolk County Council for a passenger transport badge had been refused although the applicant explained that he had not been invited to attend the hearing and as a consequence had requested that they review the application and subsequent decision.

In response to questions from the Panel, the applicant clarified details in relation to the incident, how it was reported and the company's policy at the time in dealing with such incidents. He also confirmed that at this stage, he had no future employment secured but hoped in time that he would be able to set himself up as self-employed.

The Licensing Manager summed up his case and reiterated that the hearing was to determine the suitability of the licensed driver to be granted a Combined Drivers Licence in light of details revealed on his DBS Enhanced Certificate. He referred to the Guidelines relating to the relevance of convictions – general policy which stipulated that “at least 3 years free of such convictions should be shown before an application was entertained and even then a strict warning should be administered”. The Licensing Manager also advised that the Panel had to be satisfied that the applicant was a fit and proper person to hold a Combined Driver's Licence. He requested that the Panel either grant or refuse the application, however, he advised that grounds must be given for their action as there was provision for an appeal to the Magistrates Court against that decision.

The applicant summed up his case stating that he wanted to be given an opportunity to work as a taxi driver and reiterated that the details revealed on his DBS Enhanced Certificate in no way reflected the type of person he was.

The Legal Advisor addressed the Panel and advised that the Panel had to determine whether they considered the driver to be a “fit and proper” person to be granted a Combined Drivers Licence. She advised the Panel that they also needed to consider the issue of public protection as the driver was in a position of trust. The driver would also be expected to be able to deal with difficult and challenging situations as well as potentially vulnerable passengers. The Legal Advisor stated that the Panel had to be satisfied, on the balance of probability, that the driver was a “fit and proper” person to hold a Combined Driver’s Licence. She also advised that consideration would need to be given to the information that had been submitted by Cambridge Constabulary.

The Legal Adviser also referred to the photographs that had been produced from the applicant’s Facebook page and advised that it was for the Panel to determine how much weight and how much relevance they gave them in relation to determining whether the applicant was a “fit and proper” person to hold a licence. She advised that it was not for the Panel to take into consideration Norfolk County Council’s decision to refuse the applicant’s application as it was unknown what information that they had taken into consideration when determining the application.

The Legal Advisor referred to the Licensing Manager’s report and the guidance in relation to the relevance of convictions, which may assist the Panel in coming to their decision. She also referred to the applicant’s submission in relation to the mitigating circumstances surrounding the conviction. The Legal Advisor advised that each case should be considered on its own merits with the overriding consideration being the protection of the public. Consideration had to be given to the nature and seriousness of the offence, how long ago it was committed and any subsequent penalties that had been imposed.

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 their 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). On reconvening the hearing, the Legal Advisor would announce any advice she had given in closed session.

The Panel retired and considered its decision in private. On returning, the Legal Advisor confirmed that she had not offered any further legal advice to the Panel but advised them to consider a person’s right to earn a living under the Human Rights Act against the issue of the protection of the public.

DECISION

The decision of the Panel was read out.

REASONS FOR DECISION

The reasons for the decision of the Panel were read out.

The meeting closed at 12.10pm