COUNCIL MEETING – 9 JULY 2019

REPORT OF THE LICENSING (REGULATORY) SUB-COMMITTEE

25 March 2019

Present: Councillors Ekins (Chairman), Scarborough and V Waters.

Also present: Mrs A Wilcox (Principal Environmental Health Manager), Mrs A Walton-Miller (Legal Adviser/District Law) and Mrs C A Mundy (Democratic Services Officer).

The meeting commenced at 11.15am.

1. **APPOINTMENT OF CHAIRMAN**

   **RESOLVED** that Councillor Ekins be appointed as chairman for this sub-committee.

2. **DECLARATION OF INTEREST**

   There were no declarations made.

   The chairman agreed to change the order in which the items listed on the agenda would be heard.

3. **EXCLUSION OF PRESS AND PUBLIC**

   **RESOLVED** that the press and public be excluded from the meeting during consideration of the following items in accordance with section 100A(4) to the Local Government Act 1972 on the grounds that they would involve the likely disclosure of exempt information of the description shown in schedule 12A to the Act.

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4. **APPLICATION FOR RENEWAL OF A PRIVATE HIRE DRIVER’S LICENCE**

   The annexed circulated exempt report of the director of place and strategic growth was received in relation to an application to renew a private hire driver’s licence for Ms C.
The chairman welcomed the applicant and her employer to the meeting and introduced everyone present.

The principal environmental health manager presented the report to the sub-committee. She explained that relevant information had come before the authority which may affect the decision as to whether the applicant is a fit and proper person to hold a private hire driver’s licence under the Local Government (Miscellaneous Provisions) Act 1976.

The enhanced disclosure and barring service certificate, as appended to the report, revealed a conviction for assisting unlawful immigration into an EU Member State in 2016, for which the applicant had received a one year imprisonment sentence, suspended for five years and a ban from entering French territory for three years. The applicant had failed to notify the council of this conviction in accordance with the council’s policy. The applicant had also failed on her application to declare the conviction. She had provided supplementary information which was handed to the sub-committee members at the meeting.

In addition in 2016 the applicant had a complaint registered against her for driving on the wrong side of the carriageway when turning right, potentially putting other road users at risk. This was evidenced at appendix four to the report. She also had three points on her licence for a speeding offence in October 2017, which she had notified the council of.

The sub-committee’s key objective is to ensure public safety and when determining the application it had the option to do one of the following:

- Approve the application;
- Refuse the application;
- Issue a warning;
- Require further training/retraining or other control measure to be put in place.

The chairman thanked the principal environmental health manager for her report.

The chairman and members of the sub-committee then addressed the applicant and asked for some clarity in relation to the following:

- Why she had agreed to take passengers, who were unknown to her, across the border from Italy through to France and whether she had checked their documentation before doing so?
- Whether she understood that ‘people trafficking’ was a serious offence, having been prosecuted and received a suspended sentence and a ban from entering France?
- Members then discussed the incident of driving on the wrong side of the road and asked why she had considered that this was acceptable.
She was also asked why she had failed to notify the council of both convictions but had notified the council of the speeding offence in 2017.

The applicant responded to the queries and clarified that she had not considered that by offering the passengers, who were friends of her brother, a lift that she had been breaking the law. She had not thought about asking for documentation and had not considered that she could be arrested for people trafficking. She had attended court in France and explained this to the court and believed this is why she had received a suspended sentence.

She had not been aware that she had to notify the council of any convictions, despite this being in the policy that she had been issued with, and could not explain why she had informed the council of her points in 2017, which may have been on the guidance of her employer.

Her employer was asked if he wished to add anything.

He informed the sub-committee that he was frequently asked to send this particular driver to ‘jobs’ as she was an excellent driver, extremely personable and courteous to all customers. He had not received any complaints about her and had been extremely shocked to hear about the problems she had encountered three years previously, which he was not aware of until very recently. He was, however, aware that there were a number of family problems and issues and he considered that this may have impacted on some of what had happened and that the crime had not been committed intentionally as she had not understood the implications of her actions or what was being asked of her.

The chairman asked the applicant if she considered that she had received a fair hearing. The applicant confirmed that she had.

The chairman adjourned the meeting at 12.10pm.

The chairman reconvened the meeting at 12.45pm.

**DECISION:**

**RESOLVED** that the application be refused.

**REASONS FOR DECISION:**
The sub-committee considered the report and heard from the applicant in person and her employer.

The sub-committee had taken into account the serious criminal conviction in 2016 which was not declared, either at the time or on the application form completed by the applicant on 28 January 2019. No adequate explanation as
to the circumstances surrounding this conviction was provided by the applicant. The applicant was asked whether or not she understood what she was being asked to disclose in the application form and regarding her obligations as a licensed driver. The applicant provided no satisfactory response to the questions.

Failure to report any incident is not behavior expected of a licensed driver. The applicant had not acted in a fit and proper manner and in these circumstances the sub-committee considered that it was in the interest of public safety not to renew the licence on this occasion.

The legal adviser informed the applicant of her right of appeal to the Magistrates Court.

This hearing concluded at 12.50pm.

5. APPLICATION TO REVOKE OR SUSPEND PRIVATE HIRE DRIVER’S LICENCE

The annexed circulated exempt report of the director of place and strategic growth was received to consider the potential revocation, suspension or addition of conditions to Mr S’s private hire driver’s licence.

The chairman welcomed the applicant and his employer to the meeting and introduced everyone present.

The principal environmental health manager presented the report to the sub-committee. The applicant’s licence was due to expire on 30 June 2019 and relevant information had come before the authority which may affect the decision as to whether the applicant is a fit and proper person to hold a private hire driver’s licence under the Local Government (Miscellaneous Provisions) Act 1976.

The applicant had informed the council that he had obtained seven penalty points on his driving licence following an offence of driving without due care and attention in April 2018. He had challenged the points and the case had been heard in court in January 2019. His licence had subsequently been endorsed and he had paid a fine. Whilst the applicant had informed the council of this offence he had failed to do so at the time of the incident and had therefore failed to comply with the council’s policy to inform the council within 14 days of receipt of an endorsement.

As the applicant had more than six penalty points a review of the licence was required by the sub-committee.

The sub-committee had the following options:

- To take no further action;
- Revoke or suspend the licence
• Issue a warning
• Require further training/retraining or other control measure to be put in place;
• For existing drivers who have accumulated nine or more points on their DVLA driving licence, or attract complaints about their driving standards, their drivers’ licence will normally be suspended until the driver has successfully undertaken a driving text to DVSA standards. Such a test will be at the licence holder’s expense.

The sub-committee needed to ascertain whether the applicant remained a fit and proper person to hold a licence.

The chairman thanked the officer for her report and asked the applicant to explain what had happened as this was deemed to be a serious offence.

The applicant explained the circumstances of the accident. He had been in a queue of very slow traffic on the A509 and when merging lanes had failed to see a motorcyclist and there was a collision. He had been charged with driving without due care and attention and he had challenged this and attended court in January 2019 when his licence was endorsed with seven penalty points.

He was asked, why he had failed to notify the council, in accordance with policy, immediately following the accident that he had been charged and of the pending prosecution and appeal process.

The applicant explained that he was aware of the policy but thought that as he was appealing that he did not need to inform the council, he apologised for his omission.

There being no further questions the chairman asked the applicant if he considered that he had received a fair hearing. The applicant said he had.

The chairman adjourned the meeting at 1.15pm.

The chairman reconvened the meeting at 1.30pm.

**DECISION:**

**RESOLVED** that a severe warning be issued.

**REASONS FOR DECISION:**

The sub-committee took into account the report presented by the officer and heard from the applicant personally.

The sub-committee takes very seriously the fact that the applicant had been convicted of a driving without due care offence for which seven points had been applied to his licence and that the applicant did not notify the council within 14 working days of the court date as required by the policy.
The sub-committee, however, took into account that there have been no other reported incidents and on this occasion considered that a severe warning would be reasonable, with particular reference to the fact that any further complaints/convictions/penalty points would result in the applicant’s licence being suspended and him having to undertake the DVSA Standards driving test.

6. APPLICATION FOR PRIVATE HIRE VEHICLE LICENCE

The annexed circulated open report of the director of place and strategic growth was received in relation to an application for a private hire vehicle licence.

The chairman welcomed Mr Smith of Vista Limousines to the meeting and introduced everyone present.

The principal environmental health manager presented her report to the sub-committee explaining that Vista Limousines had applied to licence a Lincoln Town Car Stretch limousine which was first registered on 1 January 2004 and is therefore over 15 years old, and which did not therefore comply with the council’s policy. The vehicle also has privacy glass to the windows and has side facing seats. As a special occasion vehicle the council can use its discretion to allow for such a vehicle to be licensed if it deems it suitable.

The applicant had also indicated that it would like an exemption from the requirements to display two permanently fixed door signs, bearing the prescribed words ‘Private hire vehicle advanced bookings only’. The policy does allow exemption from these requirements for vehicles used exclusively for chauffeur, executive, airport transfer, special event, school transport or similar specialist (non-circuit) work. The vehicle currently has small signs on both wings and the boot of the vehicle, displaying the company name and phone number, which currently would not be permitted under the policy.

The council’s key objective is to ensure public safety and the sub-committee was asked to determine whether there were sufficient grounds to divert from council policy particularly in relation to the vehicle having side facing seats.

The chairman thanked Mrs Wilcox, for her report and asked Mr Smith about the safety of the side facing seats. Mr Smith clarified that the vehicle had passed all tests and was fully insured. The side facing seats had seat belts/lap belts and passengers were asked to wear these at all times. Appended to the report were photographs of the vehicle, externally and internally.

There being no further questions the chairman adjourned the meeting at 1.50pm.
The meeting reconvened at 2pm.

**DECISION:**

**RESOLVED** that the vehicle licence be granted.

**REASONS FOR DECISION:**

The sub-committee took into account the report presented by the principal environmental health manager and heard from the applicant in person. Whilst the council was minded to grant the application for a private hire vehicle licence the sub-committee considered the council’s policy, and having heard from the applicant in relation to the side facing seats, considered that it would be reasonable to deviate from the council’s policy on this occasion owing to the fact that reasonable steps to ensure public safety by the installation of seatbelts had been taken. However, in relation to the vehicle signage the sub-committee considered that it was not appropriate to depart from the council’s policy concerning the displaying of the identification plate and the display of vehicle signage.

Chairman