

## **MID DEVON DISTRICT COUNCIL**

**MINUTES** of a **MEETING** of the **REGULATORY SUB COMMITTEE A** held on 24 November 2016 at 12.00 pm

### **Present Councillors**

R J Chesterton, J L Smith and R Wright

### **Also Present Officer(s):**

Simon Johnson (Legal Services Manager), Thomas Keating (Lead Licensing Officer) and Julia Stuckey (Member Services Officer)

#### **1 APOLOGIES AND SUBSTITUTE MEMBERS**

There were no apologies.

#### **2 CHAIRMAN - ELECTION**

**RESOLVED** that Cllr J L Smith be elected Chairman of the Sub Committee for the meeting.

Cllr Smith then took the Chair.

#### **3 TO DETERMINE WHETHER OR NOT AN APPLICANT IS FIT AND PROPER TO HOLD A HACKNEY CARRIAGE / PRIVATE HIRE DRIVER LICENCE**

Members of the Sub-Committee and officers introduced themselves.

Members of the Committee confirmed that they had no interests to declare and discussed whether to hold the hearing in public or in private.

**RESOLVED** that under Section 100A (4) of the local Government Act 1972, the public be excluded from the meeting on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

(Proposed by the Chairman)

The Sub Committee had before it a report \* from the Director of Corporate Affairs and Business Transformation relating to an application for a Hackney Carriage/Private Hire Licence asking it to consider if the applicant was 'fit and proper' to hold a licence.

The Lead Licensing Officer explained that the authority was responsible for licensing the Hackney Carriage and Private Hire trade in Mid Devon. The Local Government (Miscellaneous Provisions) Act 1976, as amended, and the Town Police Clauses Act 1847, provided much of the regulatory framework for that licensing regime.

The Officer explained that the authority had adopted a Hackney Carriage and Private Hire Policy, the most recent version of which came in to effect on 29 February 2016. The policy provided the framework for the administration of the service and set out how the Council would consider both new applications and also matters relating to existing licence holders.

The officer went on to inform Members that according to current policy their priorities in this instance should be the protection of public health and safety and the prevention of crime and disorder. Ultimately, the main priority was public safety.

Outlining the contents of the report the Licencing Officer explained that the applicant had submitted an application to Mid Devon District Council for a new Hackney Carriage / Private Hire Drivers licence on 7 September 2016.

Members were informed that the applicant had informed the licensing team that he had previously held a Hackney Carriage / Private Hire Drivers licence with Mid Devon District Council. This dated back to approximately 1999 and the licence was held for one year although the relevant file no longer existed as it would have been destroyed in line with the Council's retention policy.

Following the most recent application for a new Hackney Carriage/Private Hire Drivers licence a DBS (Disclosure and Barring Service) certificate was required and this had an issue date of 11 October 2016. It revealed previous convictions.

The licensing team had contacted the DBS Service to discuss how this information could be used by decision makers and it had been confirmed that it must not be circulated in advance of the hearing taking place. They had stated that it must only be made available at the hearing itself.

The Officer highlighted that the application that the applicant submitted for a new Hackney Carriage/Private Hire Drivers licence on 7 September 2016 asked the following question and contains the accompanying note:

*'Have you ever been found guilty or convicted of ANY offence, or been made the subject of an order, by a court in the UK or abroad? This means ALL offences, however long ago they happened. If no, insert 'NONE'.*

*Under the Rehabilitation of Offenders Act 1974, holders of hackney carriage / private hire drivers licences are classified as exempted posts and all convictions (whether 'spent' or not) must be declared. Failure to declare all convictions may affect the outcome of your application'.*

The applicant had stated 'none' in response to this question. In light of the information received on the DBS this declaration was incorrect.

There was potential for an offence to have been committed under Section 57 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to not submitting required information that was part of the application. As a result of this, the applicant had been interviewed under caution on 26 October 2016. During this interview he had stated, in relation to the error, that he was not the best with paperwork, he did not read the question fully, he believed that Mid Devon District Council would already be aware of the initial offence recorded on the DBS as it had been considered when

he was first licensed. He said that this showed there was no deliberate attempt to mislead the Council.

The Sub Committee withdrew to consider additional information that had not been available to it prior to the meeting.

On their return the Sub Committee put questions to the applicant.

The applicant informed the Sub Committee that he had read the application form too quickly and had not filled it in properly. He had thought that the question was regard to unspent convictions.

The Sub Committee withdrew to consider its decision.

The Sub Committee **RESOLVED** to decline the application for a Hackney Carriage and Private Hire Licence as they considered, having had regard to the obligation to protect public health and safety, that the applicant was not a fit and proper person to hold a licence.

Reasons for this were based on the Mid Devon District Council Hackney Carriage and Private Hire Policy February 2016 and in particular appendix B sections 9.3 intentionally misleading or having lied to the Council as part of the application process, 11.5 multiple convictions and 12.4 more than one conviction for alcohol related offences which were significant due to the serious nature of two driving convictions.

The Sub Committee also had regard to current legislation.

Members did not consider the reasons given for not declaring the offences on the application form to be acceptable.

#### 4 **TO DETERMINE WHETHER OR NOT AN APPLICANT IS FIT AND PROPER TO HOLD A HACKNEY CARRIAGE / PRIVATE HIRE DRIVER LICENCE**

Members of the Sub-Committee and officers introduced themselves.

Members of the Committee confirmed that they had no interests to declare and discussed whether to hold the hearing in public or in private.

**RESOLVED** that under Section 100A (4) of the local Government Act 1972, the public be excluded from the meeting on the grounds that it involved the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A of the Act, namely information relating to an individual.

(Proposed by the Chairman)

The Sub Committee had before it a report \* from the Director of Corporate Affairs and Business Transformation relating to an application for a Hackney Carriage/Private Hire Licence asking them to consider if the applicant was 'fit and proper' to hold a licence.

The Lead Licensing Officer explained that the authority was responsible for licensing the Hackney Carriage and Private Hire trade in Mid Devon. The Local Government (Miscellaneous Provisions) Act 1976, as amended, and the Town Police Clauses Act 1847, provided much of the regulatory framework for that licensing regime.

The Officer explained that the authority had adopted a Hackney Carriage and Private Hire Policy, the most recent version of which came in to effect on 29 February 2016. The policy provided the framework for the administration of the service and set out how the Council would consider both new applications and also matters relating to existing licence holders.

The officer went on to inform Members that according to the policy their priorities in this instance should be the protection of public health and safety and the prevention of crime and disorder. Ultimately, the main aim was public safety.

Members were advised that the applicant had submitted an application to Mid Devon District Council for a new Hackney Carriage/Private Hire Drivers licence on 6 September 2016.

A Disclosure and Barring Service (DBS) certificate was required and this had an issue date of 11 October 2016. It revealed previous convictions.

The Licensing team had contacted the DBS Service to discuss how this information could be used by decision makers and it had been confirmed that it could not be circulated in advance of the hearing taking place. They had stated that it must only be made available at the hearing itself.

The application submitted for a new Hackney Carriage/Private Hire drivers licence asked the following question and contains the accompanying note:

*'Have you ever been found guilty or convicted of ANY offence, or been made the subject of an order, by a court in the UK or abroad? This means ALL offences, however long ago they happened. If no, insert 'NONE'.*

*Under the Rehabilitation of Offenders Act 1974, holders of hackney carriage / private hire drivers licences are classified as exempted posts and all convictions (whether 'spent' or not) must be declared. Failure to declare all convictions may affect the outcome of your application'.*

The applicant had stated 'None' in response to this question. In light of the information received on the DBS this declaration was incorrect.

There was potential for an offence to have been committed under Section 57 of the Local Government (Miscellaneous Provisions) Act 1976 in relation to not submitting required information that was part of the application. As a result of this, the applicant had been interviewed under caution on 28 October 2016. During this interview he stated that he did not believe that driving offences had to be disclosed and said that this was because of the way the question was worded on the form. He thought the offence would show up on the DBS check so there was no deliberate attempt to mislead the Council as it would have come to light this way.

The Sub Committee withdrew to consider additional information that had not been available to them prior to the meeting.

On their return the Sub Committee put questions to the applicant.

The applicant explained that he had been barred from driving due to a dangerous driving offence in 2012 and had been given a 15 month driving ban, had to take an extended driving test to be able to drive again, and 150 hours community service. He stated that this had been a long time ago and he had grown up a lot since then.

There was some discussion regarding the issue date of the applicant's current licence as a three year clear period was required before he was eligible to apply for a licence. The date was clarified as being 23 December 2013.

The applicant stated that he had not declared the offence on the application form as he had assumed that a motoring offence was different to a criminal offence.

The applicant explained that in his employment winter hours were often less than summer hours due to reduced sunlight and he had intended to undertake some taxi work to bring in more money to support his growing family.

The Sub Committee withdrew to consider its decision.

The Sub Committee **RESOLVED** to decline the application for a Hackney Carriage and Private Hire Licence as they considered, with regard to the obligation to protect public health and safety, that the applicant was not a fit and proper person to hold a licence.

Reasons given for this were within the Mid Devon District Council Hackney Carriage and Private Hire Licensing Policy dated February 2016 and in particular Appendix B:

- a) 9.3 The Sub Committee found that the applicant had intentionally misled the council or lied as part of the application process;
- b) 14.1 The applicant was disqualified for driving because of a major traffic offence and the period of three years free from conviction had not yet elapsed.

When circumstances changed in the future the Sub Committee suggested that the applicant reapply.

The Sub Committee had regard to current regulation.

The Sub Committee asked that the Licensing Officer liaise with the applicant when the three year period had elapsed.

Note: - Report previously circulated and attached to Minutes.

(The meeting ended at 3.45 pm)

**CHAIRMAN**