

REGULATORY PANEL

WEDNESDAY 1 JULY 2015 AT 2.00PM

PRESENT: Councillor Bell (Chairman), Councillors Bowman S, Cape, Ms Franklin, Layden, Morton, Mrs Parsons, Scarborough, Shepherd, Mrs Stevenson and Mrs Warwick.

OFFICERS: Assistant Solicitor
Licensing Manager
Licensing Officers x2
Overview and Scrutiny Officer - observer
Mr R McDowell, work experience student - observer

RP.22/15 APOLOGIES FOR ABSENCE

There were no apologies for absence submitted

RP.23/15 DECLARATION OF INTEREST

Councillor Layden declared a personal interest in accordance with the Council's Code of Conduct in respect of agenda item B.1 – Application for a Hackney Carriage Drivers Licence. His interest related to the fact that he had previously taught the applicant.

Councillor Wilson declared a personal interest in accordance with the Council's Code of Conduct in respect of agenda item B.1 – Application for a Hackney Carriage Drivers Licence. His interest related to the fact that he knew the applicant.

RP.24/15 PUBLIC AND PRESS

It was agreed that the items of business in Part A be dealt with in public and the items of business in Part B be dealt with in private.

It was agreed by all parties that Mr McDowell could remain in the room for both items on the agenda.

RP.25/15 MINUTES OF PREVIOUS MEETING

RESOLVED – That the minutes of the meetings held on 27 May 2015 be noted.

RP.26/15 APPLICATION TO LICENCE A 6 YEAR OLD WHEELCHAIR ACCESSIBLE HACKNEY CARRIAGE

The Licensing Officer presented report GD.41/15 regarding an application to licence a 6 year old Hackney Carriage.

Mr A Young, the applicant's father and Ms Forrest, the applicant's representative were in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow. Mr W Young's representatives confirmed that they had received and read the Licensing Officer's report.

The Assistant Solicitor informed the Panel that the letter from Carlisle Taxi Association (appendix 2) and the email from Stuart Davidson (appendix 3) contained in the report should be disregarded. The correspondence was in respect of a previous application to change the Council's Policy and not the application for the vehicle being considered today.

The Panel adjourned at 2.07pm to allow Members to view the Peugeot Expert.

The Panel reconvened at 2.18pm.

The Licensing Officer reported that an application had been received from Mr W Young to licence a 6 year old Peugeot Expert wheelchair accessible vehicle as a Hackney Carriage.

Mr W Young was the holder of a private hire driver's licence and a private hire vehicle licence. He had previously licensed two wheelchair accessible Hackney Carriages and on both occasions the vehicles were less than 3 years old on initial licensing.

In 2007, in consultation with the Taxi Association, the Council amended its taxi policy to stop issuing any more new licences for 'saloon type' taxis but to continue to issue additional licences for wheelchair accessible vehicles (WAVs) and a maximum vehicle age on first licensing of 3 years was also introduced for WAVs.

Mr W Young's application had been attached to the report. The application did not comply with the Council's maximum 3 year policy on initial licensing; however, the vehicle could be licensed as a private hire vehicle with some slight modifications as the Council's Policy set a maximum age for a private hire vehicle at 8 years old on initial licensing. However, the vehicle did not meet the criteria to be licensed as a Hackney Carriage.

In response to questions the Licensing Officer clarified the following:

- All proprietors and Carlisle Taxi Association had been consulted on the age policy in 2007
- A previous, similar application, had been considered by the Panel but it had been an application and request to change the Council's Policy. The application being considered now was asking for the Panel to deviate from the Council's Policy on this occasion.

Ms Forrest, the applicant's representative, addressed the Panel. She clarified that the application was not challenging or requesting a change to Council Policy. It was an application for a vehicle in exceptional condition to be licenced outside of the Policy. She quoted the Licensing page on the Council's Website which stated that 'Carlisle City Council is responsible for several areas of licensing designed to protect public safety and promote public confidence in activities that may otherwise be open to exploitation.' She believed that the application met the objective. The vehicle was an exceptional and safe vehicle.

Ms Forrest asked the Chairman if she could circulate a document pack to the Panel. Ms Forrest would be referring to the documents and she felt it would be beneficial for the Panel to have a copy to refer to themselves.

The Chairman considered the documentation Ms Forrest had submitted and agreed that they could be circulated to Members. He asked that she referred only to relevant

documentation due to the size of the document pack and confirmed that the Panel would consider the documentation that she referred to.

Ms Forrest referred to page 1 of the document pack, Hackney Carriage Specification, and drew members attention to number 3 b) which stated that licences would not be renewed once the vehicle reached 10 years, save for exceptional condition. Ms Forrest reported that the vehicle was not over 10 years old and was in exceptional condition. The vehicle was safe and met the Council's public safety objectives.

Ms Forrest informed the Panel that age Policies were usually based on emission results but there was no mention of emissions in the Council's Policy. Page 2 of the document pack showed that the vehicle had passed its emission test. She stated that the Council's Policy did not allow a departure from the age rules and if it did not it was inflexible and unlawful. She highlighted the Private Hire Vehicle Policy and the fact that there was different rules dependant on the vehicles.

Ms Forrest quoted a number of different local authority policies, the Chairman asked Ms Forrest to restrict her evidence to Carlisle City Council Policy only.

Ms Forrest asked Members to go to the Department of Transport guidance on page 10 in the document pack. The guidance stated that, as older vehicles may be in good condition, the setting of an age policy by a local authority may be 'arbitrary and inappropriate' and a greater frequency of testing may be appropriate. She reiterated that the application was not a challenge to the Policy but she wanted to highlight the rigidity of the Policy in comparison to other polices.

The vehicle was in exceptional condition and was safe, the document pack included photos of the vehicle, its emissions test, its MOT which it passed with no comment and information on the Peugeot E7. The document pack also included a witness testimony from Mr A Young on the lack of available wheelchair accessible vehicles.

The Chairman clarified that the City Council applied discretion to each individual case and would consider granting licences in exceptional circumstances.

Ms Forrest commented that the age limit was legitimate but there were various ways of achieving the same aim. She asked that the Panel consider the vehicle on its own merits. She drew the Panel's attention to pages 67 to 69 of the document pack which contained letters of support for the application and page 72 which showed a schedule of drivers which showed the need for WAVs.

In response to questions Ms Forrest and Mr A Young clarified the following points:

- The schedule on page 72 included hackney carriage vehicles.
- Mr W Young did not have a hackney carriage driver's licence, the application was on behalf of Carlisle Drivers.
- Two drivers from the company would use the vehicle if it was licensed.
- Carlisle Drivers had a number of Hackney Carriage Drivers.
- The vehicle had 150,000 miles on the clock.
- Mr W Young had sold his previous hackney carriage vehicles as he wanted to assist another driver in purchasing a vehicle under 3 years old.

In response to questions the Licensing Officer clarified the following points:

- WAV drivers tended to carry out contract work and as a result there were times when vehicles would not be available, this occurred in all authorities.

- Carlisle licensed more than double the amount of WAVs than the rest of the County combined.
- Other local authority policies should not be used in comparison as each authority was different.
- The vehicle was twice the age of the Policy age limit

The Licensing Officer was reminded by the Assistant Solicitor that this was not an application to change the policy and that evidence from a previous application to change the policy could not be referred to and the Panel would not take account of any reference to it.

In summing up, the Licensing Officer reminded the Panel of the relevant Legislation and outlined the options open to the Panel in reaching a decision.

Ms Forrest summed up by stating that the Panel had seen the exceptional condition of the vehicle and reminded them that there was a shortage of WAVs in the City.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – The Panel has carefully considered and read the evidence in the report and listened carefully to the responses and heard from Mr W Young's representatives.

The Panel has not taken account of the letter dated 5 January 2015 from Carlisle Taxi Association or the email from Stuart Davidson to Barry Sharrock.

Mr W Young made an application to licence a 6 year old Peugeot Expert wheelchair accessible vehicle as a Hackney Carriage. The Council's Policy is that the age limit for such a vehicle on its first licensing as a Hackney Carriage is 3 years. The reason for the Policy is to enable consistency in decision making and to improve standards of the fleet in Carlisle in particularly with regard to vehicle condition and engine emissions.

The Council is only prepared to deviate from this Policy where there are exceptional circumstances which would justify its doing so.

The Panel have decided today to refuse Mr W Young's application.

The reasons for this are:

1. Whilst Mr W Young has a well maintained vehicle he has not shown that there are exceptional circumstances supporting the application
2. Mr W Young has not provided evidence that the mechanical standards of the vehicle are as good as a 3 year model, the vehicle has done 150,000 miles
3. It is not apparent why Mr W Young chose to purchase a vehicle 3 years older than the required age rather than purchase one already licensed as a Hackney Carriage or a younger model
4. The vehicle is double the Council's age policy and whilst it is well maintained the Panel failed to see that it is exceptional enough to deviate so far from the Council Policy.

That it be noted that Mr W Young's representatives were informed of the reasons for the decision and that Mr W Young had a right of appeal both of which would be confirmed in writing.

RP.26/15 PUBLIC AND PRESS

RESOLVED – That in accordance with Section 100A(4) of the Local Government Act 1972 the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in the paragraph number (as indicated in brackets against the minute) of Part 1 of Schedule 12A of the 1972 Local Government Act.

RP.27/15 APPLICATION FOR A HACKNEY CARRIAGE DRIVERS LICENCE (Public and Press excluded by virtue of Paragraph 1)

Having declared a personal interest in the matter Councillor Wilson left the meeting and did not take part in the consideration of the application.

The Licensing Manager presented report GD.42/15 regarding an application for a Hackney Carriage Drivers Licence.

The Applicant was in attendance.

The Assistant Solicitor outlined the procedure the Panel would follow. The Applicant confirmed that he had received and read the Licensing Officer's report. The Assistant Solicitor advised the Applicant that he had a right to be represented but he indicated that he did not wish to be so represented.

The Licensing Officer outlined the Applicant's licensing history and gave a detailed report of the Applicant's history whilst licensed. The Applicant had previously appeared before the Regulatory Panel following a number of complaints. The Panel had at that time revoked his Hackney Carriage driver's licence as they decided he was not a 'fit and proper person' to hold such a licence.

Following an appeal to the Magistrate's Court and further complaints received the Applicant surrendered his Hackney Carriage driver's licence in 2011.

The Applicant had submitted an application for a new licence to drive a Hackney Carriage and in view of his previous history he wished to establish if the Panel would, in principle, grant him a licence. The Applicant had completed his driving licence check as well as his Disclosure and Barring Service check neither of which indicated any further offences, he had also passed his medical examination.

The Applicant addressed the Panel. He explained his current circumstances and how sorry he was for his past behaviour. He felt he had moved on in his life and was more responsible and calmer now. He promised, should he be granted his licence, that he would continue to behave in such a manner.

In response to questions the Applicant confirmed that he had received no further convictions or cautions and had not been part of any unreported Police investigations. He felt that he could deal with members of the public in a calm and mature manner. He had carried out a driving job for two years without any incidents and the report had a letter from his employer supporting his application.

The Licensing Officer outlined the relevant Legislation and outlined the options open to the Panel.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter.

RESOLVED – The Panel has carefully considered and read the evidence in the report and listened carefully to the responses and heard from the Applicant.

The Panel noted that the Applicant had been granted a Hackney Carriage licence in 2010 by the Regulatory Panel. The licence was issued with a warning letter as the Panel had concerns regarding the Applicant's previous convictions.

During the 8 month period of being licence the Applicant came to the attention of the Licensing Department on numerous occasions, five of the incidents were set out in the report and were of a sufficiently serious nature that the Applicant appeared before the Panel. In 2010 the Panel decided that the Applicant was not a 'fit and proper person' to hold a Hackney Carriage Driver's Licence and revoked the licence. The decision was upheld by the Magistrates Court and the Applicant lodged an appeal with the Crown Court which was later withdrawn.

During the period of the appeals there were a further two complaints regarding the Applicant's driving and conduct reported to the Licensing Department. The Applicant has now made a new application for a Hackney Carriage Licence and due to the Applicant's licensing history the application is required to be considered by the Panel so they can decide if the Applicant is a 'fit and proper person' to hold a licence.

The Panel appreciated that the Applicant had waited a period of nearly five years before applying for the licence.

The Panel listened carefully to the Applicant's account of the previous history and the reasons why the Applicant now believes he is a fit and proper person to hold a licence.

The Panel have decided today to grant the licence with a strong letter of warning and a requirement that the Applicant must sit and pass the DSA Taxi test and the Council's disability awareness course.

(The meeting ended at 3.55pm)