

Regulatory Panel

Date: Wednesday, 15 March 2023

Time: 16:00

Venue: Flensburg Room

Present: Councillor Ruth Alcroft, Councillor Mrs Marilyn Bowman, Councillor Ms Jo Ellis-Williams, Councillor Keith Meller, Councillor Mrs Linda Mitchell, Councillor David Morton, Councillor Paul Nedved, Councillor Tim Pickstone, Councillor David Shepherd, Councillor Peter Sunter, Councillor Miss Jeanette Whalen

Officers: Senior Lawyer
Licensing Manager
Licensing Officer
Environmental Health Officer
Technical Officer

RP.13/23 JOHN BELL

The Chair announced the sad passing of former Councillor John Bell. Mr Bell had been a Member of the City Council from 2007 until 2019. He had been the Chair of the Regulatory Panel and the Licensing Committee from 2012 until his retirement. Mr Bell had provided kindness, advice and support to the Chair, and he would be greatly missed.

The Regulatory Panel held a minutes silence in memory of Mr Bell.

RP.14/23 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor Dr Tickner.

RP.15/23 DECLARATIONS OF INTEREST

There were no declarations of interest submitted.

RP.16/23 PUBLIC AND PRESS

The Panel discussed the matter that had been submitted as a private report on the agenda, following legal advice it was

RESOLVED - That all agenda items, as circulated, be considered in public. Agenda item B.1 would be moved into public and considered as A.3.

RP.17/23 MINUTES OF THE PREVIOUS MEETING

RESOLVED - It was noted that Council had, at its meeting on 28 February 2023, received and adopted the minutes of the meetings held on 4 January 2023 and 8 February 2023.

RP.18/23 APPLICATION FOR A NEW HACKNEY CARRIAGE VEHICLE LICENSE

The Licensing Officer submitted an application for a Hackney Carriage Vehicle Licence for a vehicle that had tinted rear windows darker than the Council's required specification of visual light transmission (VLT). (GD.13/23)

Mr Page, the Applicant and Mr Bray, his Representative were in attendance.

The Senior Lawyer outlined the procedure the Panel would follow. The Applicant confirmed that he had received, read and understood the Licensing Manager's report.

The Licensing Officer reported that the Applicant was considering the purchase of a Suzuki Swace Estate car. The vehicle had factory fitted rear tinted windows which showed a consistent reading of 25.1% VLT, the Council's Policy required 30% VLT. The Licensing Officer reminded the Panel that the Policy existed under a Safeguard concern to ensure that members of the public could be seen from outside of the vehicle and that nothing untoward was happening inside.

Officers did not have delegated powers to permit any deviation from the Council's Policy which was entirely proper. The Policy was put in place to improve standards across the entire fleet of licensed vehicles operating in the Carlisle area, to protect public safety and to maintain a consistent and transparent approach to determining applications for licences. The Licensing Officer reported that the matter was an emerging subject, many factories now routinely produced vehicles with darker windows without consideration to safeguarding.

The Licensing Officer had tested the transparency of the window tint of the stated vehicle in various lighting conditions, he confirmed that he could be seen outside of the vehicle clearly with the 25.1% tint. As the vehicles were being produced with the window tints in place it was very costly for owners to change to clear windows. He set out the options available for the Panel asking them to consider relaxing the Policy with regard to LVT limits.

In response to questions the Licensing Officer suggested that the Policy be relaxed so all window tints were accepted except for mirrored windows. He confirmed that both Allerdale Borough Council and Copeland Borough Council did not have a Policy on window tints, there were no restrictions in place for their vehicles.

Mr Bray addressed the Panel, on behalf of the Applicant. He stated that manufacturers place tinted windows in vehicles for health and safety reasons. The tinted glass prevented sunburn on long journeys, with the current global climate it was important that all passengers in the vehicles were kept safe. He stated that large manufacturers were all producing tinted windows, as well as being expensive, changing the windows could put the manufacturer's warranty at risk.

Mr Page, the Applicant, addressed the Panel. He understood the need for safeguarding and that the Panel made the decision regarding window tints case by case. He felt that even clear windows could be difficult to see through in some light especially when the vehicle was moving. The passengers could be seen in this vehicle with the existing window tint and he felt that met the safeguarding requirements.

The Licensing Officer drew Members' attention to the legislation which they must take account of and set out the options for the Panel.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter. The respective parties returned, and it was

RESOLVED - The Panel had carefully considered and read the evidence in report GD.13/23 and heard from the Licensing Officer and the Applicant.

The application had been to Licence a Suzuki Swace 1.8 petrol, hybrid which had factory fitted rear tinted windows with visual light transmission readings of 25.1%. The Council's Policy stated that there should be a visual light transmission reading of 30% or more. The Policy existed under a Safeguard concern to ensure those travelling in the vehicle could be seen by people outside of the vehicle.

The Council was only prepared to deviate from this policy where there were exceptional circumstances which would justify it doing so.

The Panel had decided to grant the application.

The Panel's reason for the decision was due to a change in the factory setting of window tints since the introduction of the Policy.

The Panel acknowledged that the Policy should be reviewed and that it would be included in the review of all Licensing Policies which would be undertaken by Cumberland Council.

RP.19/23 PRIVATE HIRE OPERATOR

The Licensing Manager presented report GD.12/23 which requested consideration of a Private Hire Operator Licence following information given to the Licensing Manager.

The Licensing Manager informed the Panel that Miss Brady, the Private Hire Operator was not in attendance but had asked that an email be circulated to the Panel which set out her desire to retain her Licence.

The Panel considered the email and agreed to proceed in the Private Hire Operator's absence.

The Licensing Manager reported that the Private Hire Operator also held a Hackney Carriage Driver Licence and Private Hire Driver Licence. The application for the Private Hire Operator Licence (trading as Border Private Hire) had been received in February for a one year Licence. Based on the information provided, the application was approved and issued on 15 February 2023 for one year. The Licensing Manager asked Members to note that Section 9 of the application requested that the applicant disclosed person(s) who were or would be involved in the operating of vehicles and bookings. The application received in February only stated Miss Brady's name.

The Licensing Manager reminded the Panel of a report they had considered in September 2022 regarding the revocation of Mr Philip Taylor's Private Hire Operator Licence as he had not been considered a fit and proper persons to hold the Licence.

On 28 February 2023 the Licensing Manager was contacted by an officer in the School Transport Team at Cumbria County Council detailing information that had been received that Mr Taylor was involved in the Private Hire Operation of Border Private Hire. Mr Taylor had sent a text message to an officer in the team stating "Hiya Just letting you know I'm back on DPS with border private hire Cars and drivers available straight away if you need anything Thanks Phil". The Licensing Manager gave an overview of the DPS tendering system used by the School Transport Team. Operators could apply to be on the system and agreed to the Terms and Conditions including agreement to be licenced appropriately at all times, once the application for the DPS was approved operators were permitted to tender for routes.

Mr Taylor also contacted the School Transport Team by telephone and stated that he was acting on behalf of Miss Brady. When officers refused to deal with him, he stated that he would get Miss Brady to give her permission for him to speak on her behalf with regard to the school contracts. Officers refused and he asked was there "anyway around this". Mr Taylor also stated to the School Transport Officer that he had "submitted several bids but had not yet heard anything". It was confirmed by the School Transport Team that some bids had been received from Border Private Hire. It was therefore evident to Licensing Officers that Mr Taylor had an involvement in the Company with regard to the bookings and this should have been disclosed on the application form for the Private Hire Operator Licence.

On 1 March Licensing Officers had attempted, unsuccessfully, to contact Miss Brady several times via telephone and an email had been sent to her. When Miss Brady did not respond a letter was hand delivered to her on 1 March requesting her attendance for an interview on 2 March. Miss Brady responded, via email, on the evening of 1 March, the email was set out in section 4.7 of the report. The email stated that she could not make the appointment and she did not wish to pursue the service further and she would inform Cumbria County Council.

Following a further request Miss Brady attended an interview, with her partner who was a licensed driver, on 3 March. At the interview Miss Brady stated that Mr Taylor had no financial interest in the business and was only involved as a friend giving advice. She stated that Mr Taylor had contacted the School Transport Team on her behalf adding that he had "nothing to do with the contracts" and "he had only been trying to be helpful and show me the ropes". Miss Brady stated that Mr Taylor had got "too involved" and she was aware that he was not allowed to be involved (due to the revocation of his own PHO licence).

In response to questions the Licensing Manager believed that Miss Brady was being used to gain the Licence for Mr Taylor, this was a serious issue. During the interview Licensing Officers felt Miss Brady was vulnerable and anxious, as stated in her email she is struggling with some personal issues.

The Licensing Officer drew Members' attention to the legislation which they must take account of and set out the options for the Panel.

The Officers then withdrew from the meeting whilst the Panel gave detailed consideration to the matter. The Officers returned, and it was

RESOLVED - The Panel had carefully considered and read the evidence in the Licensing Manager's report (GD12/23) and heard from the Council's Licensing Manager. The Panel noted that the Private Hire Operator was not in attendance but

had submitted a short statement, the Panel had taken into account the statement when reaching their decision.

The matter had been brought to the Panel following evidence which had come to the attention of the Council regarding the involvement of Mr Phil Taylor in the Border Private Hire business which the Private Hire Operator failed to disclose on their Operator's Licence application form.

The Panel had decided to revoke the Private Hire Operator's Licence.

The Panel gave the following reasons:

1. The Panel had a duty of care to the public and must be satisfied that the person holding the Private Hire Operator's Licence was a fit and proper person to hold that Licence.
2. The application form stated only one person would be involved in the company however evidence came before the Council that Mr Taylor was also involved in the business. The applicant had a duty to disclose all people involved in the business and provide a basic criminal disclosure certificate for each person.
3. Mr Taylor had previously had his Operator's Licence revoked by this Panel who did not consider him to be a fit and proper person to hold such a licence and the Panel were concerned that he was now involved in the running of another business, in particular without the knowledge of the licensing department.

The right of appeals would be contained within the decision letter.

The Panel adjourned at 17:03 and reconvened at 17:07

RP.20/23 REVIEW OF DOG BREEDER LICENCE

Councillor Morton left the meeting during the consideration of the following matter and took no part in the decision.

The Technical Officer submitted a report detailing an allegation against a licensed dog breeder (GD.14/23)

Mr Atkinson, the Dog Breeder, was in attendance.

The Senior Lawyer outlined the procedure the Panel would follow. Mr Atkinson confirmed that he had received, read and understood the Technical Officer's report. The Senior Lawyer advised Mr Atkinson that he had the right to be represented but he indicated that they would not be so represented.

The Technical Officer reported that the Dog Breeder held a two year, four star breeder's Licence was due to expire on 13 April 2023. The Licence allowed breeding from five bitches with two litters at any one time. The Dog Breeder also ran a professional dog training business called Dakota Gun Dog Training. The training business had a vast reputation whereby dogs were trained for a life with members of the Royal Family.

The Technical Officer reported that UK Animal Cruelty Files (UKACF) was a database which shared information on animal cruelty and prosecutions, convictions and appeals for information. In December 2022, a video was shared by the database which showed a man aggressively shouting and using expletive language at a young black spaniel type dog and in addition to this, this same person then

appeared to proceed to kick the dog on more than one occasion. The person named in the video footage was Mr Atkinson of Dakota Gun Dog Training and this was later confirmed by himself during an interview.

The Technical Officer played the video for the Panel, Mr Atkinson left the room whilst the video was being shown.

As a result of the video the Council invited the Dog Breeder for an interview, under PACE (Police and Criminal Evidence Act) conditions at Carlisle Civic Centre. During this time, the RSPCA also investigated the incident and advised that no further proceedings would be taken as the video evidence available was not clear enough for a veterinary surgeon to certify a level of suffering caused or a definitive time frame as the dog in question had not visited a vet for examination post the incident to check for injury. A verbal warning had been issued.

The interview was conducted on 16 January 2023 whereby the Dog Breeder showed remorse for his actions and indeed was aware of the requirement for positive reward based training. The competence of the Dog Breeder for ensuring the needs of the animals were met and the ability to recognise signs of fear, pain, suffering or distress were evidenced.

The Dog Breeder had forwarded to the Council a series of videos and photographs which evidenced his kennels and his usual training methods. During the investigation into this incident, the Dog Breeder had been co-operative throughout, and remained polite and calm, he showed remorse for his actions and was tearful during the interview. Subsequent videos and photographs were forwarded by the Dog Breeder to demonstrate his typical way of dog training and socialisation which were contrary to that of the video footage. The Dog Breeder also informed the Council of his level of expertise in which he works with dogs, including for the Royal Family which was an indicator of the quality of his work and reputation.

The Council had not received any reports of concerns with regard to the Dog Breeder previously; he had not breached his licensing conditions directly, however, Part 3, Regulation 15 of The Licensing of Activities Involving Animals (England) Regulations 2018 stated: 'A local authority may, without any requirement for the licence holder's consent, decide to suspend, vary or revoke a licence at any time on being satisfied that (d) it is necessary to protect the welfare of an animal.'

In response to questions the Technical Officer gave an overview of a four star licence which meant that the breeder was rated low risk in areas such as paperwork, health and husbandry. She confirmed that she had seen the video on her own personal Facebook page and the Dog Breeder had filmed and uploaded it himself to his own page.

The Dog Breeder then addressed the Panel. He apologised for the video, he stated he was ashamed by his actions which had resulted in a negative impact on his mental health, his family, and his business. He informed the Panel that he had been training gun dogs for thirty years, and competed with them for ten years. He had qualified for seven championships, made three dogs up to Field Trail Champions and competed at the highest level in the world. He added that he was a B Panel Field Trail Judge for the Kennel Club with expectations to rise to A Panel, to achieve this the applicant must have an exceptional record of judging and competing with dogs. He explained his personal circumstances at the time of incident and acknowledged that he should not have been training that day.

The Dog Breeder explained what he was doing in the video and clarified that he had yanked the dog back, he had not kicked it. He acknowledged that his language was disgusting, and it was not the manner that he trained. The RSPCA said he had not made contact with the dog, he had pulled it back with vigour. Referring to his breeders licence, he stated that he had bred two litters to reinforce the training work. He stated he was ashamed and remorseful.

In response to questions the Dog Breeder clarified the following:

- he had posted the video himself but he had not been in a good mental state at that time due to family news;
- he was ashamed and had never done that before;
- gun dogs needed trust and a bond, his dogs were not frightened
- he was in the top ten trainers and had dogs in Italy, Canada and Germany;
- the impact of the incident had affected his family and his mental health had suffered but he had received support from the industry;
- the Kennel Club Working Party Committee had discussed the matter at their meeting and took no further action

The Dog Breeder submitted a statement to the Panel which included references.

The Panel adjourned to read the statement at 17:33 and reconvened at 17:37

The Technical Officer responded to some matters in the Dog Breeder's statement. The Dog Breeder said no verbal warning was given by the RSPCA, he described it as a friendly chat. The Technical Officer had raised the matter with the RSPCA who stated the discussion was a frank and honest discussion and he was in no doubt about the potential legal consequences of his actions, the Technical Officer felt this amounted to a verbal warning.

The Technical Officer drew Members' attention to the legislation which they must take account of and set out the options for the Panel.

The Dog Breeder asked the Panel to reconsider the matter being considered in Part A and the potential impact it may on his family.

The respective parties then withdrew from the meeting whilst the Panel gave detailed consideration to the matter. The respective parties returned, and it was

RESOLVED - The Panel had carefully considered and read the evidence in report GD.14/23, listened carefully to the responses, watched a short video and heard from the Technical Officer and the Dog Breeder.

The Dog Breeder had been brought before the Panel following evidence that was shared on the UK Animal Cruelty Files database in the form of a video of the Dog Breeder shouting and potentially kicking a dog.

Whilst the Dog Breeder was not breaching his licence conditions in that incident directly, part 2 regulation 15 of the Licensing Activities Involving Animals (England) Regulations 2018 stated that an authority may suspend, revoke or vary a licence if at any time it is satisfied that "(d) it is necessary to protect the welfare of an animal.

The Panel had decided to allow the continuation of the Dog Breeder's Licence.

The Panel made it very clear to the Dog Breeder that they did not condone the behaviour that had been displayed in the video.

Pursuant to Procedure Rule 17.5 the following Councillors requested that it be recorded that they voted against the above decision:

Councillor Ellis-Williams

Councillor Pickstone

Councillor Sunter

Councillor Whalen.

The Meeting ended at: 18:16