

Cheltenham Borough Council

Licensing Committee – 7 March 2014

Application for a Private Hire Driver's Licence

Report of the Licensing & Business Support Team Leader

1. Executive Summary

- 1.1 An application has been received from Mr John Carr for a Private Hire driver's licence on 03.01.2014.
- 1.2 On the 26th of July 2013 the Licensing Committee revoked Mr Carr's Private Hire driver's licence. In light of the aforementioned and following consultation with the Chair and Vice-chair of the Licensing Committee, the application is brought to the Committee for determination.

2. Recommendation

2.1 The Committee is recommended to resolve that:

- 2.1.1 Mr Carr's application for a Private Hire driver's licence be granted because the Committee is satisfied that he is a fit and proper person to hold such a licence, or
- 2.1.2 Mr Carr's application for a Private Hire driver's licence be refused as the Committee considers him not to be a fit and proper person to hold such a licence.

3. Implications

Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

Legal

There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).
- 2.2 In July 2013 Mr Carr's Private Hire driver's licence was reviewed by the Licensing Committee. The review application was instigated after Mr Carr was stopped by an officer of Gloucestershire Constabulary and found to have three tyres were worn below the legal limit. The report in July stated that "PS Wallace explained that the defects were the worst tyres he had personally seen on any vehicle for some time."

- 2.3 On that occasion Members having had regard to all the relevant matters decided it would be appropriate to revoke Mr Carr's Private Hire driver's licence.
- 2.4 Mr Carr has now made a new application for a Private Hire driver's licence. The outcome of the bald tyres and other fixed penalty points are contained in the enclosed background papers.
- 2.5 In light of the fact the Committee previously revoked his licence and following consultation with the Chair and Vice-chair of the Licensing Committee, the application is brought to the Committee for determination.

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Maintenance of Vehicle

- 3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

- 3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.
- 3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers and vehicle owners responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.
- 3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make either individually or all of them. The use of these tyres must be supported by a method statement (such as the manufacturers handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS) must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

Minor Traffic Offences

- 3.9 Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.
- 3.10 In particular, an application will normally be refused where the applicant has received 12 or more penalty points on his DVLA licence in the five years prior to the application being made (whether or not the applicant was convicted by a court for the offences for which the points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months.

MINOR TRAFFIC OFFENCES

- MS10 Leaving a vehicle in a dangerous position
 - MS20 Unlawful pillion riding
 - MS30 Play street Offences
 - MW10 Contravention of Special Road Regulations (excluding speed limits)
 - PC10 Undefined contravention of Pedestrian Crossing Regulations
 - PC20 Contravention of Pedestrian Crossing Regulations with moving vehicle
 - PC30 Contravention of Pedestrian Crossing Regulations with stationary vehicle
 - TS10 Failing to comply with traffic light signals
 - TS20 Failing to comply with double white lines
 - TS30 Failing to comply with a "Stop" sign
 - TS40 Failing to comply with direction of a constable or traffic warden
 - TS50 Failing to comply with traffic sign (excluding "Stop" sign, traffic lights or double white lines)
 - TS60 Failing to comply with school crossing patrol sign
 - TS70 Undefined failure to comply with a traffic direction sign
- Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. PC10 becomes PC12)
- Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Hybrid Traffic Offences

- 3.11 Offences of the type listed below will be treated as major traffic offences if the court awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

HYBRID TRAFFIC OFFENCES

- CU10 Using vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition.
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
- CU80 Using a mobile phone while driving a motor vehicle
- SP10 Exceeding goods vehicle speed limit

SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
SP30 Exceeding statutory speed limit on a public road
SP40 Exceeding passenger vehicle speed limit
SP50 Exceeding speed limit on a motorway
SP60 Undefined speed limit offence

Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)

4. Probity in Licensing

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.
 - Be based only on consideration of relevant and material matters.
 - Be rational and reasoned.
 - Be made in a way that does not give rise to public suspicion or mistrust.
- 4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Officer Comments

- 5.1 Members must be sure Mr Carr is a fit and proper to be granted a Private Hire driver's licence.
- 5.2 Mr Carr was initially interviewed on the 5th of July 2013 by Mrs Amelia Byres. Notes of that interview are attached at **Appendix A** of this report.
- 5.3 Mr Carr was given another opportunity to make any further comments in relation to using his vehicle with defective tyre. He attended the Municipal Offices on the 23rd January 2014 and added the following to his initial interview; he said the previous incident was a misjudgement and he has now had time to reflect. He stated it was a mistake to buy part worn tyres and he will in the future only buy brand new tyres. Finally, he stated he will also check his tyres on a daily basis.
- 5.4 Subsequent to the interview on the 23rd January 2014, Mr Carr notified the Council on the 26th of February 2014 that he has received further penalty points. Due to report publishing deadlines, it was not possible to schedule another interview with Mr Carr but he has provided the Council with a written explanation which is attached at **Appendix B** of this report.
- 5.5 Members will note from the number of penalty points Mr Carr received for the offences that they should be treated as a minor traffic offences. Guidance on the relevance of minor traffic offences in relation to minor traffic offences is outlined at paragraph 3.10.
- 5.6 Mr Carr has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Background Papers

Service records.

Contact Officer

Contact officer: Louis Krog

E-mail: licensing@cheltenham.gov.uk

Tel no: 01242 775004