

Cheltenham Borough Council

Licensing Committee – 6 September 2013

Application for a Hackney Carriage Driver's Licence

Mr Shamsuz Zaman

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Shamsuz Zaman for a Hackney Carriage driver's licence.
- 1.2 Mr Zaman has convictions on his driving licence. The details of these are contained in the enclosed background papers.
- 1.3 In light of this the Public Protection Manager has taken the view that Members of Committee should be aware of the convictions because of:
- 1.3.1 The nature of the offences; and
- 1.3.2 The need to ensure that Mr Zaman is judged to be a fit and proper person to hold a Hackney Carriage Driver's Licence.
- 1.4 The Committee is recommended to resolve that Mr Zaman's application:**
- 1.4.1 be granted as Mr Zaman is a fit and proper person, or**
- 1.4.2 be refused on the grounds that Mr Zaman is deemed not to be a fit and proper person.**

1.5 Implications

- 1.5.1 Financial
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- 1.5.2 Legal
- There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.
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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).
- 2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

The question for the committee is therefore whether, given the nature of the offence, the applicant is a fit and proper person to hold a licence.

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 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 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.
- 3.5 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.

3.6 Major Traffic Offences

An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused. More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

3.7 Minor Traffic Offences

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.

4. Licensing Comments

- 4.1 Members are to note that Mr Zaman's conviction for driving whilst uninsured is treated as a Major Traffic Offence, and his conviction for using a mobile phone while driving a motor vehicle is treated as a Minor Traffic Offence. Policy guidelines on how to view each type of offence are shown above at paragraphs 3.6 and 3.7.
- 4.2 Members are to note that Mr Zaman previously applied to the Council for a Private Hire driver's licence in 2011. Mr Zaman appeared before the Licensing Committee on 6 January 2012, at which time the Committee resolved to refuse to grant a licence. This was because the Committee decided that Mr Zaman was not a fit and proper person to hold such a licence because of the convictions on his DVLA driving licence. Members are advised that no new convictions have been added since that date.

- 4.3 Members will note that in the interview notes (see background papers) Mr Zaman explained that the conviction for driving whilst uninsured came about as a result of his use of a Trade Licence whilst he was occupied in the car trade. Officers have researched this and established that people engaged in the car trade can register a Trade Licence with DVLA which enables them to drive any car in their possession as long as they register it within 14 days. However, Members are also to note that DVLA guidance notes show that vehicles covered under such a Trade Licence may only be driven by the trader for the purposes of carrying out his trade. Those DVLA guidelines make it clear that using such a vehicle for other non-business purposes, including travelling to an airport to go on holiday, is an offence.
- 4.4 Mr Zaman has applied for a 3 year Hackney Carriage driver's licence. Members should note that, if they are minded to grant the licence, they have the option of granting a 1 year or a 3 year licence.
- 4.5 Members will note that in the interview notes, Mr Zaman has observed that he is currently licensed as a taxi driver by Gloucester City Council. Members are advised that this fact is not relevant to whether Mr Zaman should be licensed in Cheltenham, as each Licensing Authority has its own Policy and its own method of establishing an applicant's fitness and propriety for being licensed.
- 4.6 Mr Zaman 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.
- 4.7 The Committee must be satisfied that Mr Zaman is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

Report Author

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