



Minutes of the meeting of the **General Licensing Sub-Committee** held in The Assembly Room - The Council House (Chichester City Council), North Street, Chichester on Thursday 21 September 2017 at 9.37 am

Members Present: Mr P Budge, Mr G McAra, Mr H Potter and Mr J Ridd

Officers present all items: Mr S Bingham (Licensing Technician), Mr L Foord (Licensing Manager), Miss K Davis (Member Services Officer) and Mr N Bennett (Legal and Democratic Services Manager)

13 Election of Chairman

It was proposed and seconded that Mr Ridd be elected Chairman of the Sub-Committee for this meeting.

RESOLVED

that Mr Ridd be elected to be the Chairman at the meeting.

14 Declarations of Interests

There were no declarations of interest made at the meeting.

15 Late Items

There were no late items for consideration at the meeting.

16 Exclusion of Press and Public

RESOLVED

that in accordance with Section 100A of the Local Government Act 1972 (the Act) the public and the press shall be excluded from the meeting during consideration of agenda item 5 for the reason that it is likely in view of the nature of the business to be transacted that there would be disclosure to the public of 'exempt information' being information of the nature described in Paragraph 1 (information relating to any individual) of Part I of Schedule 12A to the Act and the public interest

17 Hearing Procedure

The Sub-Committee noted the hearing procedure.

Local Government (Miscellaneous Provisions) Act 1976 - Application for a Private Hire Driver's Licence - Mr NK

The applicant, Mr NK, had not arrived at the meeting by 9.37am. The Sub-Committee was advised that it could either adjourn the meeting or hear the application in the applicant's absence. The Sub-Committee agreed to proceed with the application.

The Sub-Committee considered a confidential report in respect of Mr NK, who had applied for a licence to drive private hire vehicles in the District of Chichester.

Mr Foord introduced the report. He explained that the Local Government (Miscellaneous Provisions) Act 1976 stated that a licence should not be granted unless the applicant was deemed to be a fit and proper person. The definition was intentionally broad to enable Council's to consider the individual merits of each case. The Sub-Committee was being asked to consider Mr NK's application following receipt of a positive criminal record and due to a dispute with the applicant concerning the timing of the application regarding the taking of Chichester District Council's Knowledge Test, as although Mr NK had started the process of submitting an application before the Knowledge Test came into effect his application form had been incomplete with some information missing and, therefore, could not be validated until after the Knowledge Test had been introduced. Mr Foord advised that Mr NK had failed to declare his criminal conviction on his application form and provided details of the conviction to the Sub-Committee.

During Mr Foord's address, Mr Bennett informed the Sub-Committee that Mr NK had now arrived, accompanied by his wife, having been delayed because of traffic problems. He explained to Mr NK that Mr Foord had started his introduction and that it was for the Sub-Committee to decide whether or not Mr Foord should begin his introduction again and that the address to this point had simply repeated what was in the written report. Mr NK indicate that he was happy that the introduction need not be repeated.

Mr Foord continued with his introduction and reiterated the two reasons for Mr NK's application being referred to the Sub-Committee. Mr Foord advised that he had met with Mr NK on 26 July 2017 to explore the circumstances leading up to the offence. He referred to the Council's Guidelines of the Relevancy of Previous Convictions and the offence of dishonesty, in relation to Mr NK's conviction. He advised that the Licensing Authority was not aware of any further criminal convictions or of any known penalty points on his DVLA driving licence. Details were provided of Mr NK's unsuccessful application to another Licensing Authority, due to him failing its Knowledge Test four times. Mr NK's application to this Licensing Authority had been received on 19 May 2017, seven working days before the Knowledge Test was due to be introduced from 1 June 2017. However, Mr NK's application form was incomplete, as its required supporting documents had not been provided and so could not be processed. It was not until 5 July 2017 that his positive criminal record check was received. It was not known if Mr NK was applying for a one or three year driver's licence.

Mr Foord then asked a number of questions of Mr NK concerning his application.

Mr NK confirmed his name, address and date of birth. He confirmed he had received and read the agenda papers.

Mr NK provided details of the specific circumstances leading him to receive a criminal conviction. He explained that he had not declared that he had a criminal record on his application form as he thought that due to his conviction being more than five years ago it was no longer on his police record.

In response to a question from the Sub-Committee, Mr Foord informed the Sub-Committee that he had advised Mr NK that under the Local Government (Miscellaneous Provisions) Act 1976 all convictions were disclosable no matter how long ago they had occurred. Mr NK then informed the Sub-Committee that he had felt that during the interview Mr Foord had been sharp and rude to him. Mr Foord explained that he had approached the interview in the same manner that he did with all applicants speaking clearly in order to find out further information about Mr NK's application, and in particular, his criminal conviction. He had apologised at the time if he had made Mr NK feel that way, as it had not been his intention.

Following the conclusion of Mr Foord's questions to Mr NK, Mr Bennett responded to Mr NK's comment that, if his application was successful, he would not have to undertake the Knowledge Test as it was not in place when his application was submitted. He advised that it would be a matter for the Sub-Committee to decide if he was a fit and proper person to hold a private hire driver licence. A policy was now in place requiring applicants to undertake a Knowledge Test. It was open to the Sub-Committee to decide if Mr NK should undertake the Knowledge Test. Mr Bennett explained that if Mr NK had a complaint about Mr Foord he should make a separate complaint as it was not a matter for consideration at today's hearing and offered to provide further information on the complaints procedure if wished by Mr NK.

Mr NK informed the Sub-Committee that his referees had not been able to attend today's hearing.

Mr NK was then given the opportunity to address the Sub-Committee in support of his application.

The Sub-Committee then asked Mr NK a number of questions relating to his application, comprising queries clarifying the responses on his form. Mr NK confirmed that he was applying for a one year licence.

Mr NK was given the opportunity to make his closing submission.

The members of the Sub-Committee then retired to discuss and make their decision. Consent was sought for Mr Bennett to remain with the Sub-Committee while it reached its decision in the event of legal advice being required. In the event, Mr Bennett reported prior to the decision of the Sub-Committee being read out that no specific legal advice was sought by the Sub-Committee during their consideration.

RESOLVED

Having considered all evidence the General Licensing Sub Committee REFUSED the application.

The Sub Committee considered relevant law, policies and guidance but in particular the Sub Committee noted the detail of their own convictions policy. The Sub Committee considered all papers in the matter along with all representations made by all persons at the hearing or in writing including those of third parties specifically the named references in light of the focus of the matter being the assessment of whether the Applicant is a fit and proper person. The Sub Committee considered the advice set out in the report as to the definition of “fit and proper person” as included in that report at paragraphs 4.4 to 4.6. Having assessed all evidence in the report and at the hearing against that test they had significant doubt that the Applicant was a fit and proper person.

In the context of that convictions policy the Sub Committee considered the offence of 4th June 201 and representations within the application hearing from the Applicant as to the circumstances of the offence. The Sub Committee were particularly concerned by the dishonesty element of the offence. The Sub Committee considered the guilty pleas to the charged offence and that the Courts sanctions having been completed. The Sub Committee considered the fact that the Applicant had no other criminal record. The Committee considered the representations of the Applicant that he did not disclose his offence despite the form being clear that all offences were required to be disclosed. The Sub Committee considered that the indication that he had done some research online as to the time when offences became spent as being irrelevant compared to the clear express statement in bold on the application form that no offences could be spent in the context of the form.

The Sub Committee considered representations by the Licensing Officer as to failures by the Applicant to complete the Southampton knowledge test and the representations of the Applicant that the ground of his repeated failures was in respect of highway code elements. The Sub Committee considered the lack of knowledge of these issues to be relevant and of concern in the context of assessing the suitability of the Applicant.

The Sub Committee considered that a position with a firm (Uber) is available to the Applicant if his application is successful.

The Sub Committee did consider the incomplete nature of the application, however the only element of the form given weight in their decision was the failure to properly indicate that the Applicant had a criminal record. Other errors were only noted but in the context of the main failure were not given weight in deciding that the Applicant was not a fit and proper person.

Note (not forming part of decision) – The Applicant was advised separately to the decision by members that there is no bar to further future applications but the Sub Committee wished to give clear advice that unless a successful knowledge test was completed the Sub Committee would not have confidence that public safety could be properly demonstrated by the Applicant.

The meeting ended at 10.50 am

CHAIRMAN

Date: