

General Licensing Committee

A meeting of General Licensing Committee was held on Tuesday, 24th May, 2022.

Present: Cllr Paul Kirton(Chairman), Cllr Eileen Johnson(Vice-Chair), Cllr Robert Cook, Cllr Evaline Cunningham, Cllr Ken Dixon, Cllr Mick Moore, Cllr Maurice Perry, Cllr Lynn Hall (Sub Cllr Lee Spence), Cllr Marilyn Surtees, Cllr Hilary Vickers, Cllr Andrew Sherris (Sub Cllr Bill Woodhead MBE)

Officers: Natalie Hodgson, Rebecca Jackson, Johnathan Nertney, Margaret Waggott, Sarah Whaley (D o CS), Elliot Beavers, Polly Edwards (D o AH),

Also in attendance: Applicant Ref 116688 and his Legal Representative

Apologies: Cllr Jacky Bright, Cllr Lee Spence, Cllr Julia Whitehill, Cllr Bill Woodhead MBE

GLC 22/21 Evacuation Procedure

The Evacuation Procedure was noted.

GLC 23/21 Declarations of Interest

There were no declarations of interest.

GLC 24/21 CONSENT STREET TRADING POLICY REVIEW

Members were presented with a report which detailed a proposal to review the current 'Consent Street Trading Policy' designating the whole Borough as a consent area for the purposes of street trading, to enable greater regulation of standards across the whole Borough.

The model used was adopted nationally and also by neighbouring local authorities Hartlepool, Redcar & Cleveland, and Darlington.

Members were asked to consider and agree a draft resolution for public consultation (minimum 28 days) under Paragraph 2(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, to designate the whole Borough as a consent area for the purposes of street trading.

Officers highlighted to the Committee that, should Members be minded to agree the proposed public consultation, then it would make sense to undertake it immediately, in conjunction with the Council's Town Centre Regeneration Schemes.

The statutory consultation would be carried out with the Public, Police and Highways.

A brief discussion was had around how the proposals would affect community events, such as small fates etc. It was explained that consideration had been given to the different type of events such as a community event or those raising money for charity. These events could benefit from a sliding fee scale depending on the number of stalls, which the event organiser could apply for, rather than individual stall holders. Events raising money only for charity could be exempt from a fee.

Following the consultation and after analysis of the results a further report would be presented at the next available General Licensing Committee for consideration followed by Cabinet and then Council for approval.

AGREED that in accordance with Paragraph 2(1) of Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982, public consultation (minimum 28 days) be undertaken on the draft resolution to designate the whole Borough as a consent area for the purposes of street trading.

**GLC
25/21** **Exclusion of the Public**

RESOLVED that under Section 100A(4) of the Local Government Act 1972 the public be excluded from the meeting for the following items of business on the grounds that they involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Act.

**GLC
26/21** **Private Hire Driver Application – 116688**

Members were asked to determine an application for a Private Hire Drivers Licence from Applicant Ref 116688 who had previously held a licence with this Authority however had had his licence revoked.

Applicant Ref 116688 attended the meeting along with his legal representative and made representations in support of his application.

Committee papers and reports had been provided to all relevant parties prior to the meeting.

The report detailed the following:

- A copy of Applicant Ref 116688's application and DVLA check code showing no live points or offences.
- A copy of a letter to Applicant Ref 116688 revoking his Combined Hackney and Private Hire Drivers' Licence during December 2017.
- A copy of a summary of an interview with Applicant Ref 116688 and Licensing Officers dated 30 March 2022.
- A copy of Applicant Ref 116688's prosecution file.
- A copy of a Medico-Legal Report.
- A copy of a written letter of advice dated January 2011 to Applicant Ref 116688 following a complaint which had been made against him.
- A copy of a warning letter issued in 2014 to Applicant Ref 116688 following allegations made against him.
- A copy of a decision letter to Applicant Ref 116688 from Wolverhampton Council refusing an application for a Private Hire Drivers Licence dated September 2021.

The Committee noted that the application was for the grant of an application to drive private hire vehicles.

The Committee heard that Applicant Ref 116688 had previously held a combined hackney carriage and private hire vehicle licence from March 2010 to December 2017 with this Authority, however the licence was revoked due to an allegation of sexual assault, for which the applicant was arrested in December 2017.

The Committee further heard that Applicant Ref 116688 was subsequently charged with an offence of sexual assault in connection with the allegation on 13th July 2018, to which the applicant pleaded not guilty. The Committee noted that in 2021, Applicant Ref 116688 was acquitted of the offence during his trial. At the close of the prosecution case the defence presented legal argument to the judge in support of the proposition that, based on the prosecution evidence, there was 'no case to answer' and the trial against the defendant should cease. The Judge upheld the defence argument, and the trial was stopped without the defendant giving evidence. The Judge directed the jury to order a not guilty verdict thus acquitting the defendant of the charge.

Applicant Ref 116688's legal representative explained to the Committee that the circumstances that led to the applicant's charge and subsequent acquittal had been a sobering experience for him. The Committee heard that the applicant accepted that he had made mistakes with customers as a hackney carriage and private hire driver. It was also explained that the applicant had been very keen to build rapport with his customers to increase his business, which the Committee were told was the applicant's justification for gaining customers' contact telephone numbers and contacting them via telephone calls and text messages.

The Committee heard that the applicant denied previous allegations made against him by female passengers in 2011 and 2014, following which written advice and a warning letter were issued to him.

Applicant Ref 116688's legal representative submitted to the Committee that there was no statutory definition of a fit and proper person. The Committee heard that the applicant had matured over the last four years and believed that he now knew how to progress his career as a taxi driver in a more professional manner. It was explained to Members that since the revocation of his combined hackney carriage and private hire drivers' licence in December 2018, the applicant had worked as a takeaway food delivery driver without complaint. No evidence was submitted to the Committee in this regard.

Applicant Ref 116688's legal representative provided the Committee with a copy of three-character references provided in support of the applicant.

Members of the Committee were given an opportunity to ask questions of the applicant. In response to questions raised relating to the text messages sent and telephone calls made to female passengers, Applicant Ref 116688 stated that he had never given his telephone number to a passenger without being asked for it. The applicant further stated that he only contacted female passengers in connection with his taxi business and denied contacting such

passengers for any other purpose. Applicant Ref 116688 told the Committee that he only called passengers back if he had received a missed call from them. In relation to the communications with the female passenger who made the allegation of sexual assault in December 2017, the Committee heard from the applicant that he telephoned her the following day at her request, to check on her wellbeing.

The Committee heard from the applicant that he did not think it inappropriate to sign off text messages to customers with kisses.

Applicant Ref 116688's legal representative summed up the applicant's case; a very serious allegation was made against him, and he was ultimately acquitted. The applicant accepted that he should not have communicated with his customers in the way that he did. He did however submit that this was done in order to generate work, which was why he now sought a private hire vehicle drivers' licence only, and not a hackney carriage licence. The Committee heard that Applicant Ref 116688 had continued to work with the public in delivering take-away food and had done so for the past four years without complaint.

Members had regard to the Committee papers, which had been circulated prior to the hearing and presented to them, in addition to the oral submissions made on the applicant's behalf and by the applicant himself in response to the Committee's questions.

Having carefully considered the written application and documentation before them and in reaching their decision, Members had regard to the provisions of the Local Government (Miscellaneous Provisions) Act 1976. The Committee also had regard to the Council's Private Hire And Hackney Carriage Licensing Policy 2021 – 2026.

Under section 51 Local Government (Miscellaneous Provisions) Act 1976, the Committee shall not grant a drivers' licence unless they are satisfied that the applicant is a fit and proper person. When determining this matter, the Committee considered the application on its own merits.

When reaching a decision, the Committee also took into consideration the case law as detailed within the Committee report, particularly *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889 QBD. The Committee noted that it was confirmed in *McCool* that when determining an applicant's suitability to hold a licence, committees could consider evidence gathered in relation to an allegation of sexual assault, despite the applicant being acquitted.

The Committee noted Applicant Ref 116688's charge and subsequent acquittal, and carefully considered the prosecution file disclosed by the applicant. The Committee also had regard to the defence expert report of Mr Neil Harris, Consultant Urological Surgeon, which was included within the Committee report.

Based upon Applicant Ref 116688's own admissions in relation to the circumstances of the journey during which he was subsequently accused of sexual assault, the Committee noted that the applicant allowed a drunk passenger to unfasten his trousers, his zip and belt and touch his penis, despite him having a duty to get the passenger home safely. The applicant sent a

number of text messages to the passenger the next day in relation to the incident.

Applicant Ref 116688 confirmed that he did not report the incident to anyone, despite the applicant alleging that the conduct of the passenger amounted to a sexual assault upon him whilst at work. The Committee further noted that the applicant denied knowingly ejaculating, despite his semen being found on the inside of the passenger's underwear during forensic examination.

The Committee further noted that the statements provided by the friends of the alleged sexual assault victim demonstrated their concern for her as they stated that she was drunk and falling over. The Committee noted that they specifically asked Applicant Ref 116688 to get her home safely, paid the fare on her behalf and put their trust in him to do so. The Committee heard that the applicant accepted asking the female's friends to place her in the front of his vehicle, and that he did not see an issue with this. Applicant Ref 116688 stated that he made this request only in attempt to prevent her from soiling the back seats of the vehicle if she had vomited, which would have led to Applicant Ref 116688's vehicle being off the road for one or two days for valeting and drying time, leading to a loss of revenue for the applicant.

The Committee considered all of the documentation contained within the prosecution file, including the statements of three individual witnesses who had made separate allegations against Applicant Ref 116688 as follows:

1. Witness 1 alleged she had been contacted by Applicant Ref 116688 after she had been pressured by the applicant into giving him her mobile telephone number during a journey in January 2018. The witness alleged that Applicant Ref 116688 made inappropriate comments to her.

2. Witness 2 stated that in July 2017 she travelled from Yarm to Ingleby Barwick in a taxi driven by Applicant Ref 116688, who asked for her telephone number at the end of the journey. Having given the applicant her telephone number, the witness stated that she received a text message from the applicant the following day, which she ignored. The witness alleged that she received a telephone call from the applicant which she also ignored, and then What's App messages which she again ignored. The witness stated that she blocked the applicant's telephone number to prevent him from being able to contact her again. The Witness alleged that a few days later she received a call from a withheld telephone number, which was a call from Applicant Ref 116688 asking why the witness was ignoring his messages. The witness stated that although she appreciated that she gave the applicant her telephone number, the way he behaved in pursuing her after she did not engage with him, was, in her view, very inappropriate and an abuse of his position.

3. Witness 3 stated that in late 2017, she was given Applicant Ref 116688's telephone number by someone in Thornaby, when she required a taxi for her son and some friends. The witness telephoned the applicant and he agreed to collect them. The witnesses' son and friends entered the taxi and travelled to her home address. The witness alleged that around 40 minutes after she made the booking, the applicant began ringing and texting her, begging her to go home with him and offering to collect her, in order that they could cuddle and have a cup of tea. The witness had never met Applicant Ref 116688 and stated

that she had only spoken to him in order to book a taxi for her son and friends. The witness alleged that the applicant continued to send her text messages and phone calls for days. The witness stated that the applicant began to text her again a few months later and was able to recall her exact address and describe her son correctly, which she felt threatened by.

The Committee noted that it did not appear that any of the above witnesses knew each other or were connected in any way, yet they had all made very similar allegations of unwanted contact from the Applicant Ref 116688. Members were very concerned by this apparent pattern of behaviour; sending inappropriate messages and making unsolicited telephone calls to female passengers whose telephone numbers he gained through his work as a taxi driver. On the balance of probability, the Committee accepted the evidence of the witnesses, despite the applicant insisting, when questioned by the Committee, that they were all lying and that he was telling the truth.

The Committee found that the two previous allegations made against Applicant Ref 116688 by female passengers in 2011 and 2014 were corroborated by the information from the above three witnesses. Members felt that this demonstrated a pattern of concerning behaviour by the applicant in relation to female passengers. This was further supported by the inappropriate content found within the text messages extracted from Applicant Ref 116688's mobile telephone, details of which were contained within the Committee papers. The Committee noted the applicant's denial of contacting passengers for anything other than business purposes.

The Committee, having read the messages, did not accept the explanations provided by the Applicant Ref 116688 regarding his intentions in this regard. The Committee did not find the applicant's explanation of his actions in relation to these points to be reasonable or believable. The Committee's concerns in relation to these matters added to their belief that the Applicant Ref 116688 was not a fit and proper person.

Although the Applicant Ref 116688 had provided character references from friends and associates, the Committee noted that no character references were received from previous passengers of the applicant in support of his assertion that he was a fit and proper person. In addition, the Committee further noted that no character references were provided by anyone for whom the applicant had worked for, in support of his assertion that no complaints had been made against him during the course of his employment as a food delivery driver.

The Committee had regard to the three-character references submitted in support of the applicant, however Members were not persuaded that this provided sufficient evidence to find that the applicant was a fit and proper person. All of the character references detailed that Applicant Ref 116688 had made them aware of the allegation which resulted in his charge and subsequent acquittal. The Committee did not add weight to the character references, as Members found it reasonable to assume that the referees were not fully aware of the full evidence before the Committee, including the applicant's predatory behaviour in obtaining female passengers' contact telephone numbers and then initiating contact with them for non-commercial purposes.

The Committee did not concur with Applicant Ref 116688's suggestion that

granting him a private hire vehicle licence as opposed to a hackney carriage licence reduced the opportunity for him to contact passengers as he would only be able to accept booked fares. When determining fitness and propriety to hold a licence, the Committee did not apply different standards to private hire and to hackney carriage licence applications.

The Committee were not satisfied that they would allow females for whom they care to enter a vehicle with Applicant Ref 116688 alone due to their doubts surrounding his improper conduct when communicating with and transporting female passengers.

Ultimately, the Committee did not believe that Applicant Ref 116688 was a fit and proper person to hold a private hire vehicle drivers' licence owing to the contact and comments which he had initiated with female passengers, the inappropriate nature of his text messages to female passengers and his unprofessional use of their mobile telephone numbers. The Committee also considered Applicant Ref 116688's own admissions in relation to the circumstances of the journey during which he did not prevent a drunk passenger from having sexual contact with him. The Committee resolved that the applicant was not and fit and proper person to hold a licence and the application was refused.

RESOLVED that Applicant Ref 116688's application for a Private Hire Drivers Licence be refused as he was not deemed to be a fit and proper person for the reasons as detailed above.