

WEST LINDSEY DISTRICT COUNCIL

MINUTES of the Meeting of the Regulatory Sub-Committee held in the MS Teams on 17 November 2020 commencing at 10.30 am.

Present: Councillor David Cotton (Chairman)

Councillor Mrs Caralyne Grimble (reserve but present throughout the Hearing in case of technical issues)
Councillor Paul Howitt-Cowan
Councillor Mrs Angela Lawrence

In Attendance:

Tracy Gavins	Licensing Enforcement Officer
Katie Storr	Senior Democratic & Civic Officer
Kim Robertson	Principal Solicitor, Legal Services Lincolnshire
Andy Gray	Housing and Enforcement Manager

Apologies: None

Also in Attendance: The Applicant and the Applicant's Solicitor

5 OPENING OF MEETING AND CONFIRMATION OF THE CHAIRMAN .

Councillor Cotton welcomed everyone to the re-convened meeting, adjourned from 6 October. This being a re-convened it was **RE-AFFIRMED** that Councillor Cotton would be chairing the day's proceedings.

Before moving to formal introductions, it was noted the Applicant had not joined the meeting nor accepted the invitation.

Confirmation was sought from the Applicant's Solicitor whether he would be representing the Applicant in his absence. This was confirmed not to be the case and there was a short adjournment whilst the Applicant's Solicitor contacted his client.

Having being notified of the Applicant's intention to join, the Chairman indicated he would allow the Applicant until 10.45am.

The Applicant's Solicitor took the opportunity to seek confirmation as to whether all the matters referred to within the report were truly relevant to today's case given a licence had been granted in 2017.

The Council's Legal Adviser confirmed all matters, including those known to the Council in 2017, were relevant for the purposes of the granting of such a licence.

6 REGISTER OF ATTENDANCE

In the continued absence of the Applicant, formal round the table introductions were made.

7 MEMBERS DECLARATIONS OF INTEREST.

Councillor David Cotton declared a personal interest in the matter as a serving Magistrate. In the event that an appeal was lodged with the Magistrates' Court, Councillor Cotton would not be permitted, by the Court, to 'sit' on such appeal.

8 PROCEDURE.

The Chairman confirmed the Principles of Natural Justice were to be followed.

The Procedure to be followed was summarised by the Legal Advisor.

9 EXCLUSION OF PUBLIC AND PRESS.

RESOLVED that under Section 100 (A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 – Information relating to an individual.

The Meeting Administrator advised that the Applicant was now actively trying to join the meeting but appeared to be having technical issues. Having taken several measures, further assistance would be required.

In response to the Chairman's indication that, whilst all efforts would be made to assist the Applicant, he intended to continue with proceedings at 11.00am, the Applicant's Solicitor raised an objection, citing a Council system failure as opposed to a failing on his client's part.

Proceedings were halted whilst technical support was sought and the Applicant was successfully joined to the meeting at 11.09 am. Both the round table introductions and the procedure to be followed were again repeated.

10 APPLICATION FOR THE GRANT OF A COMBINED HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE.

Members considered a report on the suitability of an applicant to be granted a combined hackney carriage/ private hire drivers licence. The Licensing Manager highlighted the relevant sections of the report with regards to the reason for calling the meeting and brought Members' attention to relevant appendices.

Members confirmed they had no questions in respect of the report.

The Applicant's Solicitor expressed his concern that evidence relating to some of the latter incidents was merely hearsay and had not been tested. He also suggested that these matters had been addressed by the Council previously and this fact should have been referenced within the report, which he considered to be bias and prejudicial in its presentation.

The Applicant's Solicitor was invited to address the Committee, presenting his case and calling the Applicant as a witness, and to offer detailed explanation regarding the allegations and circumstances.

In doing so the Sub-Committee heard how in the Applicant's Solicitor's view the majority of the information in the evidence pack was prejudicial, citing to Members what he considered to be the only relevant piece of information contained.

The Applicant's Solicitor was further of the view that the outcome of any investigation as opposed to the allegation itself was the most relevant factor. There was no dispute of the evidence found but the committee heard from the Applicant how such technology worked and as such the Applicant's Solicitor was of the view that any intent had not been proven, resulting in no further action being taken against his client, and nothing formal being placed on his record.

Regarding some of the older allegations, and allegations which the Council had been aware of when originally granting a licence in 2017, the Applicant's Solicitor submitted these were now so old that they should now not be of concern to the Committee. Any evidence relating to the more recent allegations, he repeated, was flawed in their presentation and were as a result of untested evidence. The Committee heard from the applicant his version of events which resulted in him leaving employment, and the fact that these allegations had not been put to him by a previous employer at the time. The Applicant also advised how it was he who had raised some of the issues with his employer and outlined to the Committee the circumstances. The Applicant also advised how the Licensing Department had spoken with to him in respect of the contents of the letter from his former employer and had not indicated that this would form a matter of his record of personal conduct.

Returning to the older allegations, the Applicant's Solicitor again submitted that these were now so old, they should not be considered, furthermore a previous Committee had not considered them enough to not a grant a licence. Again it was suggested that any evidence relating to new allegations was either flawed, bias or hearsay or had resulted in no proceedings against his client and as such his Client's position, had not fundamentally changed from when he was granted a licence with a caution around future conduct.

For the purpose of the Hearing, at the request of his Solicitor, the Applicant outlined the circumstances of his previous misconduct and the pressure he had felt to accept a caution.

In response to comments which had been made by the Applicant's Solicitor, the Council's Legal Adviser addressed the hearing, reminding the Panel that their role was not to judge whether these incidents happened beyond reasonable doubt, as expected by a Court of Law, but determine whether the applicant was a "fit and proper" person in line with the now regularly accepted test.

The Sub-Committee were permitted to accept hearsay evidence not being a court of law and

not having to satisfy the reasonable doubt standard, this was clear within the Council's Convictions Policy and Driver Licensing Policy

Furthermore the Committee were reminded of the advice given to licensing authorities from the Department of transport in particular paragraph 5.14 below;

5.14 Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be 'given the benefit of doubt'. If the committee or delegated officer is only "50/50" as to whether the applicant or licensee is 'fit and proper', they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.

The guidance confirms that licensing authorities must take a more robust approach to safeguarding.

The Hearing also heard of a recent Crown Court Case at St Albans on 21st October 2020 in the Three Rivers District Council case where the court placed particular emphasis on the Department for Transport's statutory guidance for licensing authorities and the instruction that authorities should not give the benefit of the doubt to drivers when deciding on questions of fitness and propriety.

The Applicant's Solicitor disputed the parallels between the cases.

The Sub-Committee took the opportunity to question the Applicant on the verbal information he had provided throughout the course of proceedings, and sought his view on why such an allegation would be made; receiving appropriate responses.

The Chairman provided the Applicant and his Solicitor and the Council's Legal Adviser the opportunity to make any closing statements they had.

In summing up, the Applicant's Solicitor again repeated his previous comments around the prejudicial nature of the hearing paper, was of the view that innocent until proven guilty should always be applied in the principles of natural justice. He was of the view that nothing fundamental had changed since his client had been granted a licence in 2017. No formal proceedings had been taken against his Client and no marker placed on his record. The Applicant's Solicitor submitted that a condition could be applied and this was an option the Committee could consider.

Whilst no initial statement was made by the Council's Legal Adviser, having heard the summing up points she reminded the Sub-Committee that a Magistrate's Court had upheld the previous decisions taken by the Authority in respect of this Applicant.

The Chairman explained that the Sub-Committee (excluding the reserve Member), its Legal Adviser and Administrator would now retire to consider all the information and to reach their decision. The Applicant would be notified of the decision within 5 working days of the meeting.

Note: The formal hearing closed at 12.29

The Applicant was subsequently advised in writing that the Sub-Committee had

RESOLVED that having considered all of the representations and information before the Hearing and giving due weight to the evidence presented the Committee were unanimous in their decision that the licence be refused, for the reasons outlined to the Applicant in his decision notice.

The Applicant has a right to appeal which must be made within 21 days of being notified of this decision, under the provisions of sections 52 and 59 of the Local Government (Miscellaneous Provisions) Act 1976

The meeting concluded at 12.29 pm.

Chairman