

Wednesday, 6 December 2023

LICENSING SUB-COMMITTEE

A meeting of **Licensing Sub-Committee** will be held on

Thursday, 14 December 2023

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,
Torquay, TQ1 3DR

Members of the Committee

Councillor Douglas-Dunbar

Councillor Tolchard

Councillor Long

Together Torbay will thrive

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, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**
To elect a Chairman/woman for the meeting.
2. **Apologies**
To receive apologies for absence, including notifications of any changes to the membership of the Sub-Committee.
3. **Declarations of interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent items**
To consider any other items that the Chairman decides are urgent.
5. **Application for Torbay Council Driver's Licence**
To consider a report on the fit and proper status of an applicant who seeks to hold a Torbay Council Drivers' Licence.

(Pages 3 - 15)

TORBAY COUNCIL

Report No: Public Agenda Item: **Yes**

Title: **Application for Torbay Council Driver's Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **14th December 2023**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Shaun Rackley**
Telephone: **01803 208025**
E.mail: Shaun.rackley@torbay.gov.uk

1. What we are trying to achieve

This report concerns an application for a Torbay Council Driver's Licence, where the Applicant does not meet Torbay Council's Hackney Carriage & Private Hire Licensing Policy (hereinafter referred to as 'the Policy') requirements. This report is to consider whether the Applicant is considered a 'fit and proper person' to hold a Torbay Council Driver's Licence.

2. Recommendation(s) for decision

- 2.1 This matter must be determined on its individual merits and any supporting facts or testimony advanced at a hearing. Therefore, there is no recommendation. The options available to Members, however, are highlighted in paragraph **A3.1 of Annex 1** to this report.

3. Key points and reasons for recommendations

- 3.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriage and Private Hire Vehicles and drivers within Torbay.
- 3.2 Sections 51 and 59 of the 1976 Act, in conjunction with section 46 of the Town Police Clauses Act 1847, make provision for the licensing of drivers and state that a district council shall not grant a licence to drive a Private Hire or Hackney Carriage vehicle unless they are satisfied that the driver is a 'fit and proper' person to hold a driver's licence.
- 3.3 There is no judicially approved test of fitness and propriety and therefore it is the

responsibility of Licensing Authorities to determine whether a driver, or an Applicant, is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.

- 3.4 This report follows an application made by Mr Royston Woodall on the 16th of November 2023 for a Torbay Council issued dual drivers' licence. In his application, Mr Woodall declared to Torbay Council that he had been convicted of a relevant drugs offence, dated the 12th of June 2014.
- 3.5 In considering the Policy, Mr Woodall's drug offence is listed within, and the Policy states that 'A licence will not normally be granted until at least ten years have passed since the completion of any sentence following conviction for an offence shown below:
 - Production of drugs'
- 3.6 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

For more detailed information on this proposal please refer to the Supporting Information.

**Rachael Hind
Regulatory Service Manager (Commercial)**

Annex 1 - Supporting information

A1. Introduction and history

- A1.1 Under provision of the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act), Torbay Council is the Licensing Authority in respect of Hackney Carriages, Private Hire Vehicles and their drivers within Torbay.
- A1.2 Sections 51 (in respect of Private Hire drivers) and 59 (in respect of Hackney Carriage drivers) of the Act state that a district council shall not grant a licence to drive a Private Hire vehicle or Hackney Carriage unless they are satisfied that the driver is a 'fit and proper person to hold a driver's licence'.
- A1.3 There is no judicially approved test of fitness and propriety and therefore it is the responsibility of Licensing Authorities to determine whether a driver, or an applicant is indeed fit and proper to hold such a licence. In the absence of such a test, a number of practices have developed over time and have stood up to scrutiny in the Courts and are therefore commonly accepted amongst the majority of Licensing Authorities.
- A1.4 Torbay Council has adopted a number of common practices for testing the 'fit and proper' status of drivers and applicants and includes an Enhanced Disclosure & Barring Service (DBS) check to name a few.
- A1.5 This report follows an application made by Mr Royston Woodall on the 16th of November 2023 for a Torbay Council issued dual drivers' licence. In his application, Mr Woodall declared to Torbay Council that he had been convicted of a relevant drugs offence relating to, producing controlled drug – class B, dated the 12th of June 2014.
- A1.6 Mr Woodall was written to by Shaun Rackley from Torbay Council's Licensing Department on the 23rd of November 2023, to request his submission which would be put before Licensing Committee. This document can be found at Appendix 1.
- A1.7 Mr Woodall responded by letter and supplied his mitigating circumstances. This document can be found at Appendix 2.
- A1.8 A copy of Mr Woodall's Enhanced DBS can be found at Appendix 3. The conviction which he declared on the application form is listed as follows:
- | | |
|------------|---|
| Date – | 12 June 2014 |
| Offence – | Producing controlled drug – Class B – other on misuse of Drugs Act 1971 S.4(2) |
| Court – | South and West Devon Magistrates |
| Disposal – | Suspended imprisonment 12 months wholly suspended 24 months
Victim Surcharge £100
Forfeiture and destruction under S27 Misuse Drugs Act 1971 of drugs/plant/equipment |
- A1.9 The Statutory Taxi and Private Hire vehicle standards, as issued by the Department for Transport state:

5.12 Licensing authorities have a duty to ensure that any person to whom they grant a taxi or private hire vehicle driver's licence is a 'fit and proper' person to be a licensee. It may be helpful when considering whether an applicant or licensee is fit and proper to pose oneself the following question:

5.13 Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?

If, on the balance of probabilities, the answer to the question is 'no', the individual should not hold a licence.

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.

Relevant excerpts of Torbay Councils Taxi policy state:

5. Drivers

General Licensing Requirements

5.4 When determining whether a person is "fit and proper", the Licensing Authority will require the applicant to demonstrate that:

v) They satisfy the requirements of the Licensing Authority with regard to any previous or current criminal conduct and has produced an acceptable Enhanced Disclosure and Barring Service (DBS) certificate to that effect

Appendix A: Taxi & PHV Licensing Criminal Convictions Policy –

5 Drugs

5.1 A serious view is taken of any conviction involving drug related offences.

5.2 A licence will not normally be granted until at least ten years have passed since the completion of any sentence following conviction for an offence shown below:

- The supply of drugs
- Possession with intent to supply
- Connected with possession with intent to supply
- Production of drugs
- Any similar

A1.10 There is a right of Appeal to the Magistrates' Court as provided under section 52 (1) of the 1976 Act against the Licensing Sub-Committee decision. Such an appeal must be lodged within 21 days from the date of a Notice following the decision.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

A2.1.1 There are no significant risks, as no preferred option is indicated by the author of the report.

A3. Options

A3.1 The options are:

- (i) To grant Mr Royston Woodall's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Woodall is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Royston Woodall's application on the grounds that he is not considered a 'fit and proper' person to hold such a licence.

A4. Summary of resource implications

A4.1 There may be some resource implications if there is an Appeal to the Magistrates' Court.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

A5.1 There are no environmental sustainability issues, equalities or crime and disorder issues other than as outlines in this report.

A6. Consultation and Customer Focus

A6.1 There has been no public consultation on this matter and there is no requirement for the Licensing Sub-Committee to consult the public on this matter.

A7. Are there any implications for other Business Units?

A7.1 There are no implications for other business units.

Documents available in members' rooms

None

Appendices

Appendix 1 Letter to Royston Woodall from Shaun Rackley (Licensing Department) requesting Enhanced Disclosure and Barring Service (DBS) check – dated 23rd of November 2023

Appendix 2 Letter from Royston Woodall with mitigating circumstances to be put before Licensing Committee – dated 24th of November 2023

Background Papers:

The following documents/files were used to compile this report:

Torbay Council's Hackney Carriage & Private Hire Licensing Policy 2022
Department of Transports, Statutory Taxi and Private Hire vehicle standards 2020

Please reply to: Mr Shaun Rackley

Licensing & Public Protection
Town Hall
Castle Circus
Torquay
Devon
TQ1 3DR

Mr R Woodall
[REDACTED]

My ref: NEW/SAR

Your ref:

Telephone: 01803 208025

E-mail: Shaun.rackley@torbay.gov.uk

Date: 23 November 2023

Dear Mr Woodall,

Re: Application for Licensed Drivers badge

I am writing to you following your submission of an application for a Licensed drivers badge with Torbay Council.

Unfortunately, after checking the application, it has been identified you have a relevant conviction which is listed in Torbay Councils Taxi Policy.

The Policy states the following:

5 Drugs

5.1 A serious view is taken of any conviction involving drug related offences.

5.2 A licence will not normally be granted until at least ten years have passed since the completion of any sentence following conviction for an offence shown below:

- *The supply of drugs*
- *Possession with intent to supply*
- *Connected with possession with intent to supply*
- *Production of drugs*
- *Any similar offences (including attempted or conspiracy to commit) or offences which replace the above*

The conviction which you received for producing controlled drug – class B, dated the 12th of June 2014, is covered under this section of the Policy. Furthermore, ten years have not passed since the completion of the sentence.

A decision on whether a Licensed driver's badge can be granted, or refused must be made by Torbay Council's Licensing Committee.

A provisional hearing date of **Thursday the 21st of December 2023 at 09:30hrs** has been set, however, this may be subject to change until early January 2024 dependent on Members availability. I will keep you informed once I have final confirmation of the date.

Please can you respond in writing with any mitigating circumstances that will support your application. This will be included in the report, however, you will also be invited to attend and address the Committee members on the day and put your case before them.

Please can you return all requested information by no later than **Wednesday the 29th of November 2023**. Failure to return the documents may delay the hearing and a later date being set.

If you wish to withdraw your application, please let me know and I can arrange a refund of the fee paid.

I look forward to hearing from you in due course.

Should you need to contact us please quote the reference number above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Rackley'.

Shaun Rackley
Licensing Officer

24/11/2023

FAO - Mr S Rackley
License Officer
Torbay Council
Torquay Town Hall
Torquay
TQ13DR

Dear Mr Rackley

I write with reference to my previous nearly spent conviction. I would like to emphasise that this was now a considerable period of time ago and I am by no means the same person or in the same situation I was 10 years previously.

Since my conviction I have brought up my two daughters [REDACTED] and [REDACTED] including dealing with the bereavement of my partner and their mother some years ago, these have been difficult times and have helped me to understand the more important things life and I am undoubtedly not the same man I was a decade ago.

It is very important to my current situation that I re-train, I have been involved in the construction industry for most of my working life and this is now taking its toll on my physical wellbeing, as at 58 years of age it's proving more and more difficult. I need to continue supporting my family and have a daughter who is still in full time education working towards her degree and a younger child who still requires a great deal of support from me, so I am sure you can see the importance to me.

I can assure you of my commitment to becoming a taxi driver I have a healthy lifestyle in all other respects i.e. I do not drink alcohol and gave up smoking many years ago now. I have been driving for 40 years, have taken an advanced driving course and have no endorsements or points on my license. I feel that being a local person of a responsible nature this course of employment is most suitable for me.

I would appreciate you looking on my current situation favourably as the chance to retrain and take up an alternative type of employment would make a huge difference to the overall wellbeing of me and my daughters.

Yours faithfully

Mr Royston Woodall

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