

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

Appendix 3 Copy of Royston Woodall's Enhanced DBS check (restricted)

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