

Wednesday, 3 April 2024

LICENSING SUB-COMMITTEE

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

Thursday, 11 April 2024

commencing at **9.30 am**

The meeting will be held in the Banking Hall, Castle Circus entrance on the left corner of the Town Hall, Castle Circus, Torquay, TQ1 3DR

Members of the Committee

Councillor Johns

Councillor Barbara Lewis

Councillor Tolchard

A Healthy, Happy and Prosperous Torbay

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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. **Minutes** (Pages 3 - 6)
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 14 March 2024.
4. **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.)
5. **Urgent items**
To consider any other items that the Chairman decides are urgent.
6. **Application for Torbay Council Driver's Licence** (Pages 7 - 21)
To consider a report on the fit and proper status of an applicant who seeks to hold a Torbay Council Driver's Licence.

Minutes of the Licensing Sub-Committee

14 March 2024

-: Present :-

Councillors Johns, Barbara Lewis and Virdee

25. Election of Chairman/woman

Councillor Johns was elected as Chairman for the meeting.

26. 29 Ilsham Road, Wellswood, Torquay, TQ1 2JG

Members considered a report on an application for a new Premises Licence in respect of 29 Ilsham Road, Wellswood, Torquay, TQ1 2JG.

Written Representations received from:

Name	Details	Date of Representation
Responsible Authority	Written representation that sets out additional conditions to be added to the application if the application for a Premises Licence is granted.	5 February 2024
Member of the Public	Written representation objecting to the application for a new Premises Licence on the grounds of 'The Prevention of Public Nuisance'.	Undated
Member of the Public	Written representation objecting to the application for a new Premises Licence on the grounds of 'The Prevention of Public Nuisance'.	Undated
Member of the Public	Written representation objecting to the application for a new Premises Licence on the grounds of 'The Prevention of Public Nuisance'.	Undated
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	grounds of 'The Prevention of Public Nuisance'.	
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Member of the Public	Written representation objecting to the application for a new Premises Licence on the grounds of 'The Prevention of Public Nuisance'.	Undated
Member of the Public	Written representation objecting to the application for a new Premises Licence on the grounds of 'The Prevention of Public Nuisance'.	Undated

Oral Representations received from:

Name	Details
Applicant's Agent	The Applicant's Solicitor outlined the application. The Applicant's Agent and Applicant also responded to Members questions.
Member of the Public	The Member of the Public outlined their objection to the application and responded to Members questions.
Member of the Public	The Member of the Public outlined their objection to the application and responded to Members questions.

Decision

That the application in respect of 29 Ilsham Road, Wellswood, Torquay. TQ1 2JG be granted as applied for, subject to the additional conditions proposed by the Police and accepted by the Applicant, and the following conditions to be added:

- 1) At the end of each operational day, an employee of the premises shall check the immediate vicinity of the premises and pick up and dispose of appropriately, any litter attributable to the premises.
- 2) The premises shall be open to the public from 7 am to 11 pm seven days per week.

Reason for decision

Having carefully considered all the written and oral representations, Members resolved to grant the Premises Licence, having been satisfied that the conditions proposed by the Police and accepted by the Applicant were sufficiently comprehensive and robust for this type of premises, and promoted the Licensing Objectives.

In determining the additional condition in respect of litter, Members noted the concerns raised in the representations and that presented orally by the Interested Parties present at the hearing and resolved this addition to be proportionate in the circumstances.

Members also noted the Applicants revised operational timings put forward in their presentation, which Members found to be reassuring, in that the Premises Licence Holder had listened to the concerns raised in the objections, demonstrating a responsible attitude and approach in wanting to operate the premises in harmony with its nearby residents.

Members initially shared the same concerns as the objectors, around the lack of detail in the application operating schedule. However, with careful consideration of each additional condition put forward by the Police and accepted by the Applicant, members were reassured that in compliance, these premises operations would seek to uphold the Licensing Objective which in turn, should alleviate the objectors' concerns, as it had theirs.

Members did have concerns around staffing ratios during operational hours but noted that the Applicant had two other licensed premises within Torquay, one of which was in close proximity to this proposed premises and that these operated without reported concern by the Responsible Authorities.

Members noted on the acceptance by the Applicant to the conditions proposed by the Police, the Police had no objection to this application. Furthermore, no other Responsible Authority had raised an objection or concern in respect of this application which was persuasive in forming their opinion that to grant this application, would not undermine the Licensing Objectives.

Members noted that the objectors had raised a number of other factors in their representations but found these either to be outside the remit of the Licensing Authority to determine or irrelevant to this application and the Licensing Objectives.

In concluding, Members noted that a Review of the Premises Licence can be sought by any Interested party or a Responsible Authority, should issues arise as a result of granting this licence.

Chairman/woman

TORBAY COUNCIL

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

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

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **11th April 2024**

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 Scott Hannaford-Hill on the 23rd of January 2024 for a Torbay Council issued dual drivers' licence. In his application, Mr Hannaford-Hill has failed to declare to Torbay Council that he had been convicted of a relevant violence offence, dated the 3rd of February 2022. This conviction was discovered when the Licensing Team checked Mr Hannaford-Hill's Enhanced Disclosure & Barring Service (DBS) check.
- 3.5 In considering the Policy, Mr Hannaford-Hill's violence 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:
 - *Any offence (including attempted or conspiracy to commit offences) similar to those above.'*
- 3.6 Further to the conviction in 2022, Mr Hannaford-Hill received a conviction for another relevant violence offence in 2004. Although this is classed as spent under the Rehabilitation of Offenders Act 1974, he has two separate offences in relation to violence and the Policy states that '*A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.'*
- 3.7 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 Scott Hannaford-Hill on the 23rd of January 2024 for a Torbay Council issued dual drivers' licence. In his application, Mr Hannaford-Hill has failed to declare to Torbay Council that he had been convicted of a relevant violence offence relating to, Battery, dated the 3rd of February 2022. The conviction was identified after Mr Hannaford-Hill submitted his Enhanced DBS check to the Licensing Team.
- A1.6 Mr Hannaford-Hill was written to by Shaun Rackley from Torbay Council's Licensing Department on the 8th of February 2024, to request his submission which would be put before Licensing Committee. This document can be found at Appendix 2.
- A1.7 Mr Hannaford-Hill responded by email and supplied his mitigating circumstances. This document can be found at Appendix 3.
- A1.8 Mr Hannaford-Hill also supplied a reference from his current employer Mr Gary King. This document can be found at Appendix 4.
- A1.8 A copy of Mr Hannaford-Hill's Enhanced DBS can be found at Appendix 1. The conviction which he failed to declare on the application form is listed as follows:

Date – 03 February 2022
Offence – Battery
Court – South and West Devon Magistrates
Disposal – Fine £400
 Costs £85
 Victim Surcharge £40

A previous conviction for violence in 2004 is also listed upon Mr Hannaford-Hill's Enhanced DBS, this is as follows:

Date – 05 March 2004
Offence – Wounding
Court – Exeter Crown
Disposal – Community punishment order 100 hrs
Compensation £500
Licensed premises exclusion order 9 mths from all the Torbay licensed block exclusion scheme
Costs £250
Subsequently varied 03/03/06
Community punishment order 80 hrs
Community rehabilitation order 12 mths
Order revoked 16/04/07
Subsequently varied 16/04/07
Imprisonment 28 days

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 –

3 Offences Involving Violence

3.3 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:

- Arson*
- Malicious wounding or grievous bodily harm which is racially aggravated*
- Actual bodily harm*
- Assault occasioning actual bodily harm*
- Grievous bodily harm*
- Robbery*
- Possession of firearm*
- Possession of a weapon*
- Riot*
- Assault police*
- Violent disorder*
- Common assault*
- Resisting arrest*
- Any racially-aggravated offence against a person or property*
- Affray*
- Any offence that may be categorised as domestic violence*
- Harassment, alarm or distress, intentional harassment, or fear of provocation of violence*
- Any offence (including attempted or conspiracy to commit offences) similar to those above.*

3.6 A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.

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 Scott Hannaford-Hill's application for a Torbay Council issued Driver's Licence, if satisfied that Mr Hannaford-Hill is considered a 'fit and proper' person to drive a Hackney Carriage or Private Hire vehicle.
- (ii) To refuse Mr Scott Hannaford-Hill'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	Copy of Scott Hannaford-Hill's Enhanced DBS check (restricted)
Appendix 2	Letter to Scott Hannaford-Hill from Shaun Rackley (Licensing Department) requesting mitigating circumstances – dated 8 th of February 2024
Appendix 3	Email from Scott Hannaford-Hill with mitigating circumstances to be put before Licensing Committee – dated 28 th of February 2024
Appendix 4	Reference for Scott Hannaford-Hill from employer Mr Gary King – dated 28 th of February 2024

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

Document is Restricted

Please reply to: Mr Shaun Rackley

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

Mr S Hannaford-Hill



My ref: NEW/SAR

Your ref:

Telephone: 01803 208025

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

Date: 08 February 2024

Dear Mr Hannaford-Hill,

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 Enhanced Disclosure & Barring Service (DBS) check, it has been identified you have a relevant conviction which is listed within Torbay Councils taxi policy.

The policy states the following:

3 Offences Involving Violence

3.3 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:

- *Arson*
- *Malicious wounding or grievous bodily harm which is racially aggravated*
- *Actual bodily harm*
- *Assault occasioning actual bodily harm*
- *Grievous bodily harm*
- *Robbery*
- *Possession of firearm*
- *Possession of a weapon*
- *Riot*
- *Assault police*
- *Violent disorder*
- *Common assault*
- *Resisting arrest*
- *Any racially-aggravated offence against a person or property*
- *Affray*
- *Any offence that may be categorised as domestic violence*
- *Harassment, alarm or distress, intentional harassment, or fear of provocation of violence*
- *Any offence (including attempted or conspiracy to commit offences) similar to those above.*

If you require this in a different format or language, please contact me.

As your conviction for Battery was only received in 2022, ten years have not passed since the completion of that conviction/sentence. Further to this recent conviction in 2022, there is a second conviction from 2004 meaning you now have two convictions for violence.

The policy states the following:

3.6 A licence will not normally be granted if an Applicant has more than one conviction for an offence of a violent nature.

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

I have not yet set a hearing date, however, in order to assist me with writing the report which will be presented to members of the Licensing Committee on the day of the hearing, please can you respond in writing with any mitigating circumstances that will support your application as this will be included in the report.

Once I have the requested information, I will book a hearing date and you will be invited to attend and address the Committee members if you wish to and put your case before them.

Please can you return all requested information by no later than **Monday 19th of February 2024**. 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



Shaun Rackley
Licensing Officer

From: Scott Hannaford-Hill [REDACTED]
Sent: Wednesday, February 28, 2024 2:39 PM
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: Licensed driver application

Hello Shaun
Statements as requested

To Torbay Licensing Committee.

I am writing to you to in response to my license not being granted due to a conviction I received on 03/02/22 for an offence committed on 25/10/21.

Although the particular offence of "Battery" is not on your list of offences to prohibit a license being granted, it has been explained to me that the reason is because of the aggressive nature of the incident.

I hope that if I give an explanation regarding the background of the events that took place you may reconsider.

First I'd like to tell you a little about myself; I am a 42 year old father of two. I have held a door supervisor badge for 3 years, working alongside the police on many occasions to keep the public safe. In the role I have not received a single complaint. I am trying to maximise my earning potential to provide the best life I can for my two children and I saw that obtaining my taxi badge along with my work ethic would help me achieve this.

Regarding the incident in question I hold my hands up to acting in an inappropriate manner. I took a matter in to my own hands that should have been dealt with by the police. The man I had the altercation with had been terrorising our town for years, using weapons to threaten and intimidate people. I had, had words with him and when it escalated I was also threatened with a knife. Due to the fact there were many other people present and there was a dangerous weapon involved instead of just reporting it, I took it upon myself to try and deescalate the situation, something I now hugely regret and have learned from. True to form the male persisted to come into the venue he had been continuously terrorising, waving a 13 inch machete around (this was reported to the police and he was issued a warning). I would like to make it known that the court decided to charged me with the least punishable offence they possibly could due to circumstances and I was allowed to keep my SIA license as I personally was not considered a threat.

In conclusion I really hope that now I have explained the circumstances and reasons for my conviction you would reconsider my application and help me to move forward with a career that I know will help me to do the best I can for my family.

Thank you very much for taking the time to listen.

Kind regards.

Scott Hannaford-Hill

From: Scott Hannaford-Hill [REDACTED]
Sent: Wednesday, February 28, 2024 2:39 PM
To: Rackley, Shaun <Shaun.Rackley@torbay.gov.uk>
Subject: Re: Licensed driver application

Gary King



RE Scott Hanfordhill

I would like to confirm I have known Scott for a good number of years, I have also employed him for over 2 years as security at one of my pubs.

I have always found him to be calm and very professional and totally trustworthy.

I am fully aware of his criminal record and the circumstances that it arose from. This happened in one of my pubs Ye Olde Well House in Paignton .. there was a man called [REDACTED] who has some mental health issues and he had been causing major issues through out the town at the time this incident took place, this included threatening people with a machete, he kept on entering our pub even though he was barred. One evening he came in and became very threatening towards myself, we called 999 and asked for police assistance, meanwhile Scott was in the pub and he spoke to [REDACTED] and convinced him to leave also he asked him not to come back, he dealt with this in a calm and professional manner leading to a peaceful resolution. About 2 hours later [REDACTED] returned with the machete (see cctv) he came in looking for Scott! We again called the police but by the time they arrived [REDACTED] had gone.

I called Scott and told him to be aware that [REDACTED] was looking for him with a machete, the following day Scott was in the pub and again [REDACTED] walked in and threatened Scott right in front of me and a number of other customers, he said he was going to stab him up ... he reached inside his jacket, as he did this Scott used what I would have considered reasonable force and took [REDACTED] to the floor, he then restrained him. I believe that Scott acted in the first instance in Self Defence but equally Scott was aware of the potential danger [REDACTED] posed to other customers in the pub. Scott checked to see if [REDACTED] had a knife and after assessing that there was no danger he let him get up and [REDACTED] left the pub. In my opinion Scott did nothing wrong and acted in order to keep himself and the public safe and only did what I myself or anyone fearing for their safety would have done.

Please consider allowing him to have his taxi licence as I really do believe he would be no trouble and would be a very decent taxi driver.

Yours
Gary King