SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

[2022] SC DUN 6

DUN-B507-20

NOTE BY SHERIFF JILLIAN MARTIN-BROWN

in the cause

RAKESH SAHI

Appellant

against

DUNDEE CITY COUNCIL

Respondent

Appellant: Lee; MML Legal
Respondent: Woodcock; Dundee City Council

Dundee, 1 April 2021

NOTE

Introduction

[1] This is an appeal against the decision of the respondents to refuse to renew the appellant's taxi driver's licence. The dispute concerned whether the respondents exercised their discretion in an unreasonable manner.

Procedural History

[2] The decision to refuse to renew the licence was taken by the respondents' licensing committee ("the committee") at a meeting held remotely on 5 November 2020. A statement of reasons was produced in a letter dated 19 November 2020. A summary application

seeking to reverse the decision of the committee was lodged on 1 December 2020 and a hearing was assigned for 19 March 2021 by way of teleconference.

[3] Written submissions and authorities were lodged in advance, for which I am most grateful. Having considered the oral and written submissions for the parties, I refused the application. I have been asked to provide a note outlining my reasoning.

Background facts and circumstances

[4] The appellant averred that in or around June 2020, he submitted an application to renew his taxi driver's licence with the respondents. A letter of objection was submitted by Police Scotland dated 19 June 2020. That letter highlighted: (i) the appellant had a conviction for speeding in 2018 which had not been declared on the application form; (ii) the appellant had been reported to the procurator fiscal for another speeding offence in February 2020, which had not been declared on the application form; and (iii) the appellant had been issued with a fixed penalty notice for not obeying a traffic sign in a pedestrian area in March 2020.

[5] The committee determined that the appellant was no longer a fit and proper person to continue to be the holder of a taxi driver's licence and refused his application.

Appellant's submissions

[6] The appellant submitted that the respondents' decision was too harsh and one no other committee acting reasonably could have reached. The respondents exercised their discretion in an unreasonable manner.

[7] The offences that formed the basis of the respondents' decision to refuse to renew the appellant's licence were minor offences, only one of which was committed in the course of

his duties. The two speeding offences occurred whilst the appellant was using his vehicle for private purposes. The applicant had a clean driving licence prior to these offences. The three offences were committed over a period of 2½ years. These were material considerations that required to be evaluated.

[8] The failure to disclose these offences was an innocent oversight on the part of the appellant and occurred at a time when the appellant was under severe stress. His father-in-law was dying at the time and had since passed away. In *City of Glasgow* v *Girvan* 1998 SLT 1004, it was held that personal circumstances must be taken into consideration and could not be disregarded.

[9] The speeding offences were both committed on the same stretch of road which was notorious for a sudden change in speed limit from 70mph to 50mph. The appellant paid his fine timeously. The matter could have been dealt with far more appropriately with either a warning or a final warning.

[10] In *Middleton* v *Dundee City Council* 2001 SLT 287, the appellant had been convicted of speeding, failure to stop at stop signs, failure to rectify a defective lamp and failure to produce documents. He was issued with a warning before the decision was made to refuse the renewal of his licence. Those offences were much more extensive than this particular case, where, in a professional capacity, the only offence the appellant had committed was being in a pedestrian zone four minutes too early due to his clock being fast.

[11] Each offence alone would be insufficient to allow the committee to refuse to the application to renew the appellant's licence. Taking all three offences into account cumulatively, it still remained that the decision to refuse the application was far too harsh. The appellant resided at home with his wife and daughter and was the main earner in the family. This decision had taken away his livelihood and threatened his ability to continue to

maintain and support the family home and their living. If this decision was upheld, then the financial consequences would be catastrophic.

Respondents' submissions

[12] The respondent submitted that applications for taxi driver's licences are made under the Civic Government (Scotland) Act (1982) ("the 1982 Act"). Section 13 of the 1982 Act provided the requirement for a licence to drive a taxi. The process for making an application for such a licence was contained in schedule 1 to the 1982 Act. This set out, *inter alia*, the grounds for objection to, and refusal of, an application. The procedure and grounds for appealing a decision in relation to an application were also set out. The appellant's application was refused on the grounds set out at paragraph 5(3)(a)(ii) of that schedule, namely that the applicant was not a fit and proper person to hold a licence.

[13] The grounds of appeal against such a decision could be found in paragraph 18 of schedule 1 to the 1982 Act. There was only one ground of appeal relied upon by the appellant in seeking to challenge the decision, which was that the respondents exercised their discretion in an unreasonable manner.

[14] The word "harsh" was used on a number of occasions to describe the respondents' decision. However, harshness was not the test in determining whether this ground of appeal was established. Reference was made to the case of *Loosefoot Entertainment Ltd* v *City of Glasgow* DLB 1991 SLT 843. Although that case involved an appeal under the Licensing (Scotland) Act 1976, the judgment contained a statement of the court's jurisdiction which could be applied equally to an appeal under the 1982 Act. Sheriff C H Gordon QC indicated that:

> "In my view, therefore, it is open to me to accept that the board's decision must be upheld in an appeal under section 39(4)(d) unless it can be said to have acted in the absence of any factual basis or that its decision was so unreasonable that no reasonable board would have reached it or, of course, on the ground that it took matters which it should not have taken into account and failed to take into account matters which it should have taken into account …".

[15] There was no suggestion of the absence of any factual basis for the respondents' decision. There were no averments setting out any material which was taken into account but which should not have been. Equally, there were no specific averments alleging failures to take relevant material into account, other than perhaps his previous clean driving record, but this was not put forward by the appellant at the hearing as a reason not to refuse to renew his licence.

[16] The appellant averred there would be serious financial consequences for him if he lost his licence. However, none of that information was before the respondents at the hearing on 5 November 2020, so they could not be criticised for failing to take it into account. Even if it could be argued that such consequences for the appellant should reasonably have been within the contemplation of the respondents, a licence holder's personal circumstances were not relevant to the determination as to whether the licence holder was a fit and proper person to be the holder of a licence, which was the ground of the refusal in this case. In the unreported Inner House case of *David Rose* v *Falkirk District Council* (11 March 1994), it was noted by Lord McCluskey that the issue for the sub-committee was whether or not the appellant was a fit and proper person and his personal hardship and other circumstances had little or no bearing on that issue.

[17] It was a matter for the committee to attach such weight as it chose to matters which were undoubtedly relevant to the activity for which the licence was held. That was clear from the cases of *Ranachan* v *Renfrew* DC 1991 SLT 625 and *Hughes* v *Hamilton* DC 1991

SLT 628. In *Hughes*, the Inner House held that the question as to what weight fell to be attached to the recorded convictions was plainly a matter upon which the committee was obliged to form an opinion. Once there was relevant material before the licensing authority, the question as to the weight to be attached to that material and the significance of any other balancing factors must be for the authority to assess.

[18] The decision could not be characterised as so unreasonable that no licensing authority could have reached it. The fact that others might have reached a different view, such as issuing a warning instead, did not make the decision of the respondent so unreasonable that no licensing authority would have reached it. For all of those reasons, the appeal should be refused.

Legislation

[19] Paragraph 18 of schedule 1 of the 1982 Act provides that:

> "(7) The sheriff may uphold an appeal under this paragraph only if he considers that the licensing authority, in arriving at their decision -
>
> (a) erred in law;
> (b) based their decision on any incorrect material fact;
> (c) acted contrary to the principles of natural justice; or
> (d) exercised their discretion in an unreasonable manner."

Decision

[20] It is clear from the terms of paragraph 18 of schedule 1 that it is not my role to make the decision of the committee again. Instead, it is for me to consider if the committee erred in law, based their decision on any incorrect material fact, acted contrary to the principles of natural justice, or exercised their discretion in an unreasonable manner.

[21] Taking each of those in turn, there was no suggestion of any factual error, nor any taking into account of irrelevant considerations.

[22] In considering whether the respondents erred in law in failing to take into account material considerations, the letter of 19 November 2020 makes it clear that the committee did take into account the appellant's explanations for the speeding offences, namely inadvertence. They also took into account that the speeding offences occurred during his personal time when he was dropping off his daughter. They took into account his personal circumstances, namely that his mind had been "all over the place" following the death of his father-in-law. They also took into account that the three offences had been committed over a period of 2½ years. In the circumstances, I am of the view that the committee took into account all of the material considerations that were before it. Accordingly, I find no error of law.

[23] Turning to the reasonableness of the exercise of the committee's discretion, the letter of 19 November 2020 indicates that even if the explanation for not declaring the speeding convictions was accepted, the record was still unsatisfactory because it showed the same offence at much the same location twice. That was said not to be the sort of behaviour to be expected of a licensed taxi driver. That, coupled with the third offence, amounted to an unsatisfactory record. That demonstrates to me that a balancing exercise was carried out by the committee in relation to these offences. The case of *Hughes* sets out that it is for the committee to decide what weight to attach to the offences, even where, in that case, the sheriff considered them to be trivial.

[24] Applying the principles set out in *Hughes*, I am of the view that the previous convictions disclosed to the committee have a bearing upon the fitness of the appellant to hold a taxi licence since they are all road traffic offences which could impact on the safety of

other road users or pedestrians. The question as to what weight falls to be attached to those convictions and the significance of any other balancing factors is for the committee to decide.

[25] Though the decision of the respondents will seem harsh for the appellant and his family, both of whom will suffer financially because of this decision, I am of the view that the decision is not such that no reasonable committee could have arrived at it. I therefore find that the committee exercised its discretion in a reasonable manner.

[26] Having found no factual error, procedural error, error in law or unreasonableness, I refused the appeal. The respondents moved for expenses. The appellant conceded that expenses should follow success in the usual way. I therefore awarded the expenses in favour of the respondents.