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Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Thursday, 1 October 2020 at 12:30 pm
Venue:	Council Chamber
Membership:	Councillors Blackwell, Egan & Skipp
Officers attending:	Mel Harris - Head of Licensing & Safer Communities Andrew Smith – Corporate Legal Adviser
Committee Enquiries:	Loretta Hill, Ext. No. 2427

PART I

(Business to be taken in public)

- 1. Appointment of Chairman**
- 2. Procedure for the Sub-Committee**
- 3. Appeal against refusal to grant a Private Hire Driver's Licence – Applicant S**

The report of the Head of Licensing and Safer Communities is attached.

- 4. Decision**

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PROCEDURE FOR HEARING

1. Introductions

- a. Chairman introduces Panel Members to the applicant.
- b. Chairman identifies officers and their roles.
- c. Applicant identifies themselves, any representative and any accompanying persons. They also identify who intends to present the case.
- d. Objector(s) to be identified.

2. Case Summary by the Head of Licensing and Safer Communities

As shown at Agenda Item 3.

3. Objector(s) presents objection(s)

4. The Applicant's Submission

The applicant or their representative will submit their case

5. Questions from Panel

Opportunity for any questions from Panel to either side.

6. Adjournment

Proceedings will be adjourned while the Panel withdraw to consider its decision. During this time the Clerk will accompany the Panel to record the decision. The Committee may request the presence of the Legal Advisor to give them legal advice.

7. Decision

The Panel will reconvene and the Chairman will announce the decision.

8. Conclusion

The Chairman will close the proceedings

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LICENSING SUB COMMITTEE

1 October 2020

Subject: Appeal against refusal to grant a Private Hire Driver's Licence – Applicant S

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

To consider the appeal made by applicant S against the refusal by the Council to grant a Private Hire Driver's Licence.

2. Background

Applicant S contacted the Licensing Department in September 2020 to apply for a Private Hire Driver's Licence. The Council refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate because Applicant S has the following convictions:

Date of Conviction: 10 March 2011

Offence: Destroy or Damage Property at a Value Unknown

Disposal: Compensation

Date of Conviction: 5 April 2007

Offence: Driving a Motor Vehicle with Excess Alcohol

Disposal: Disqualification from Driving 12mnths, Fine, Costs

A copy of the DBS certificate is attached at Appendix 1

A copy of the application form is attached at Appendix 2.

The legislation relating to the refusal to grant a driver's licence is contained under the provisions of the LG(MP)A 1976, section 51, whereby at 51.(1) subject to the provisions of this part of this Act, a district council shall, on receipt of an application from any person for the grant of a licence to drive private hire vehicles, grant to that person a driver's licence:

Provided that a district council shall not grant a licence-

- (a) unless they are satisfied that the applicant is a fit and proper person to hold a driver's licence: or
- (b) to any person who has not for at least twelve months been and is not at the date of the application for a driver's licence, the holder of a licence granted under Part III of the Act of 1972 (not being a provisional licence) authorising him to drive a motor car.

(2) A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary.

(3) It shall be the duty of a council by which licences are granted in pursuance of this section to enter, in a register maintained by the council for the purpose, the following particulars of each such licence, namely-

- (a) the name of the person to whom it is granted;
- (b) the date on which and the period for which granted; and
- (c) if the licence has a serial number, that number, and to keep the register available at its principal offices for inspection by members of the public during office hours free of charge.

Under S52. Any person aggrieved by –

- (1) the refusal of the district council to grant a driver's licence under section 51 of this Act; or
- (2) any conditions attached to the grant of a driver's licence;

may appeal to a magistrate's court.

3. 'Fit and Proper'

The definition of what is a fit and proper person is not defined in law however the generally accepted test is:

- Would you allow your son, daughter, mother, spouse or other person you care about to get into a vehicle with this person alone?

This definition was supported in the judgement by HHJ Silber in the case of Leeds City Council v Hussain which surrounds the suspension of a driver:

...'the purpose of the power of suspension is to protect the users of licensed vehicles and those who are driven by them and members of the public. Its purpose is to prevent licences being given or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty and that they are people who would not take advantage of their employment to abuse or assault people.'

As Applicant S has been convicted of the above offences he is not regarded as a fit and proper person to hold an operator's licence or a driver's licence and the Council made the decision to refuse to progress the application.

Applicant S requested an appeal against this decision on 14 September 2020.

A copy of the dated email appeal confirmation is attached at Appendix 3

4. Legal implications

Decisions in relation to the grant of a licence give rise to the obligations under the Human Rights Act 1998. The Council will therefore ensure that there is a review hearing before the Licensing Sub-Committee. It should be noted that Applicant R has the right to appeal the decision made by the Council to the Magistrates Court if he is aggrieved by the decision of the Sub-Committee.

5. Options

The Sub-Committee is advised that it has the following options when determining this application.

- (i) Uphold the decision to refuse to progress the Private Hire Driver's Licence application
- (ii) Allow the Private Hire Driver's Licence application to progress.

Recommendation

The decision of the Sub Committee is required following proper consideration of the application and any representations made to the Sub Committee.

Appendices

Appendix 1 – DBS certificate & update service check results

Appendix 2 – Application form

Appendix 3 – Appeal confirmation

Background Papers: Local Government (Miscellaneous Provisions) Act 1976

http://www.legislation.gov.uk/ukpga/1976/57/pdfs/ukpga_19760057_en.pdf

000383



0000056863000383010200

**Enhanced Certificate**
Page 1 of 4Disclosure &
Barring Service

DBS Fee Charged

Certificate Number

3

Date of Issue:

12 SEPTEMBER 2019

Applicant Personal Details

Surname:

Forename(s):

Other Names: NONE DECLARED

Date of Birth:

Place of Birth: LAMBETH

Gender: MALE

Employment Details

Position applied for:

OTHER WORKFORCE TAXI DRIVER PHD331

Name of Employer:

OXFORD CITY COUNCIL

Countersignatory Details

Registered Person/Body:

OXFORD CITY COUNCIL TAXI LICENSING

Countersignatory:

RICHARD MASTERS

Police Records of Convictions, Cautions, Reprimands and Warnings

Last known occupation:

UNEMPLOYED

Alias Name(s):

Gender:

MALE

Birth Details:

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

1

Date of Conviction:

05 APRIL 2007

Offence:

1 DRIVING A MOTOR VEHICLE WITH
EXCESS ALCOHOL
ON 27 MARCH 2007
ROAD TRAFFIC ACT 1988 S.5(1)(A)

Court:

SOUTH-WEST ESSEX MAGISTRATES

Disposal:

FINE 100.00
DISQUALIFICATION FROM DRIVING 12 MTHS
REDUCED DISQUALIFICATION FROM DRIVING BY 03
MONTHS IF COMPLETES REHABILITATION SCHEME BY
05/11/07
DRIVING LICENCE ENDORSED
COSTS 60.00

Conviction:

2

Date of Conviction:

10 MARCH 2011

Offence:

1 DESTROY OR DAMAGE PROPERTY AT A
VALUE UNKNOWN
ON 23 OCTOBER 2010
CRIMINAL DAMAGE ACT 1971 S.1(1)

Court:

MID-SOUTH ESSEX MAGISTRATES

Disposal:

COMPENSATION 350.00

Information from the list held under Section 142 of the Education Act 2002

NONE RECORDED

DBS Children's Barred List information

NONE RECORDED

DBS Adults' Barred List information

NONE RECORDED

Other relevant information disclosed at the Chief Police Officer(s) discretion

NONE RECORDED

Enhanced Certificate

This document is an Enhanced Criminal Record Certificate within the meaning of sections 113B and 116 of the Police Act 1997.

Use of certificate information

The information contained in this certificate is confidential and all recipients must keep it secure and protect it from loss or unauthorised access. This Certificate must only be used in accordance with the Disclosure and Barring Service's (DBS) Code of Practice and any other guidance issued by the DBS. Particular attention must be given to the guidance in the fair use of the information in respect of those whose Certificate reveals a conviction or similar information. The DBS will monitor the compliance of Registered Bodies with this Code of Practice and other guidance.

This Certificate is issued in accordance with Part V of the Police Act 1997, which creates a number of offences. These offences include forgery or alteration of Certificates, obtaining Certificates under false pretences, and using a Certificate issued to another person as if it was one's own.

This Certificate is not evidence of the identity of the bearer, nor does it establish a person's entitlement to work in the UK.

Certificate content

The personal details contained in this Certificate are those supplied by or on behalf of the person to whom the Certificate relates at the time the application was made and that appear to match any conviction or other details linked to that identity.

The information contained in this Certificate is derived from police records, and from records held of those who are unsuitable to work with children and/or adults, where indicated. The police records are those held on the Police National Computer (PNC) that contains details of Convictions, Cautions, Reprimands and Warnings in England and Wales, and most of the relevant convictions in Scotland and Northern Ireland may also be included. The DBS reserves the right to add new data sources. For the most up to date list of data sources which are searched by the DBS please visit the DBS website.

The Other Relevant Information is disclosed at the discretion of the Chief Police Officers or those of an equivalent level in other policing agencies, who have been approached by the DBS, with due regard to the position sought by the person to whom the Certificate relates.

Certificate accuracy

The DBS is not responsible for the accuracy of police records.

If the person to whom this Certificate relates is aware of any inaccuracy in the information contained in the Certificate, he or she should contact the Countersignatory immediately, in order to prevent an inappropriate decision being made on their suitability. This Countersignatory will advise how to dispute that information, and if requested arrange for it to be referred to the DBS on their behalf. The information should be disputed within 3 months of the date of issue of the Certificate.

The DBS will seek to resolve the matter with the source of the record and the person to whom the Certificate relates. In some circumstances it may only be possible to resolve a dispute using fingerprints, for which consent of the person to whom the Certificate relates will be required.

If the DBS upholds the dispute a new Certificate will be issued free-of-charge. Details of the DBS's disputes and complaints procedure can be found on the DBS's website.



Certificate check results

[Print this page](#)

Certificate for _____, Date of Birth: _____, Certificate Number _____

Certificate Print Date: 12/09/2019

This Certificate remains current as no further information has been identified since its issue.

Check performed by Melanie Harris at 16:39 on 10/09/2020

This status only relates to the individual named on the Certificate. No checks have been made against any third parties associated to this individual. Please see our guidance for further information about what this could mean for you as an employer.

Please note: If the Status check has been carried out on an Enhanced Certificate in relation to a position which is a Regulated Activity you must satisfy yourself that the original Enhanced Certificate included checks of the relevant DBS Barred Lists (Children/Adult).

[Perform another check or Exit](#)



Application for the grant of a Private Hire Driver's Licence

Date received	14/09/20	PHD number	
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Name and address of applicant

Name		
[Redacted]		
Address		
[Redacted]		
[Redacted]		
[Redacted]		
Age and DOB	phone	email
[Redacted]	[Redacted] 63	[Redacted]

Present occupation and employer	carer / [Redacted] Licensed PHD Driver OXFORD CITY COUNCIL
Have you ever been refused a licence?	NO
How long have you held a full licence to drive a motor vehicle?	28 years

Have you ever been convicted in court or received any fixed penalty notices?
Yes/~~No~~ *Delete as appropriate

Give details of all convictions, fixed penalty notices or any court or proceedings pending against you.

Offence	Court	Date	Fixed penalty
S.P 30		18/12/2016	3pts
DAMAGE FRUIT Machine	MID-SOUTH ESSEX MAGISTRATES	23/10/2010	\$350 Compensation
D.R 10	SOUTH-WEST ESSEX MAGISTRATES	27/03/2007	Disqualification \$60 COSTS

If any person knowingly or recklessly makes a false statement or omits any material particularly when giving information under this section, they shall be guilty of an offence.

Signed	Date
[Redacted Signature]	14/09/2020

Helen Collins

From: Licensing
Sent: 14 September 2020 12:16
To: s
Subject: RE: appeal

Thank you for the application form and for making the application fee to my colleague. I can confirm we have accepted your appeal against the decision not to grant you a private hire drivers licence. I will advise the date of the appeal hearing as soon as I have it.

With best regards

Helen Collins
Community Safety Officer
Castle Point Borough Council

T: 01268 882461 | E: hcollins@castlepoint.gov.uk | W: www.castlepoint.gov.uk
A: Council Offices | Kiln Road | Thundersley | Benfleet | SS7 1TF

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-----Original Message-----

From:
Sent: 14 September 2020 11:04
To: Licensing <Licensing@castlepoint.gov.uk>
Subject: appeal

To whom it may concern documents as asked many thanks