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AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Tuesday 16th May 2017 at 10.30a.m.
Venue:	Council Chamber
Membership:	Councillors Acott, Bayley and MacLean
Officers attending:	Mel Harris - Head of Licensing & Safer Communities Callum Hall – Corporate Legal Adviser
Committee Enquiries:	Cheryl Salmon, Ext. No. 2454

PART I (Business to be taken in public)

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

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

As shown at Agenda Item 3.

3. The Applicant's Submission

The applicant or their representative will submit their case

4. Questions from Panel

Opportunity for any questions from Panel to either side.

5. 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.

6. Decision

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

7. Conclusion

The Chairman will close the proceedings

LICENSING SUB COMMITTEE

16 May 2017

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

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

To consider the appeal made by the applicant Mr XX (d.o.b. 01/10/89 male) of an address in Billericay, Essex against the refusal to grant a Private Hire Driver's Licence.

2. Background

Mr XX came into the Licensing Office on the 12th April 2017 to apply for a Private Hire Driver's Licence. The Head of Licensing & Safer Communities refused to accept Mr XX's application because he had been convicted at Snaresbrook Crown Court on 15th September 2016 for the distribution of private sexual photographs and films with intent to cause distress and sentenced as follows:

- 15mths imprisonment suspended for 24mths
- 100 hrs unpaid work requirement restraining order for 5yrs (Protection against Harassment)
- £140 Victim Surcharge
- £150 Costs

A copy of the conviction details are attached at Appendix 1.

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 by obiter by Silber J. 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.'

Therefore as Mr XX has been convicted of a serious criminal offence namely a sexual offence during the previous 7 years and been sentenced to a term of imprisonment suspended for 24 months he is not regarded as a fit and proper person to hold a driver's licence and the Head of Licensing & Safer Communities made the decision to not grant him a Private Hire Driver's Licence.

4. Castle Point Licensing Policy

Under the Authority's pre-licensing conditions a person being considered for a private hire badge under points 13/14/15 of page 9 of the policy shall:-

- (13) Not have been convicted of a criminal offence during the previous 3 years
- (14) Not have been convicted of a serious criminal offence e.g. causing grievous bodily harm or sexual offence during the previous 7 years and not have been convicted of a criminal offence, which is not otherwise 'spent' under the terms of the Rehabilitation of Offenders Act 1974 as defined by the Home Office
- (15) Not have received an official police caution for a criminal offence within the previous 12 months

A copy of this page of the Policy is attached at Appendix 2 of the report

5. 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 fair hearing before the Licensing Sub-Committee. It should be noted that Mr XX 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.

6. Options

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

- (i) Uphold the decision to refuse to grant the Private Hire Driver's Licence.
- (ii) Grant the Private Hire Driver's Licence subject to appropriate conditions.
- (iii) Grant the private Hire Driver's Licence.

Recommendation

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

Resolution required**Background Papers:**

Local Government (Miscellaneous Provisions) Act 1976

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

Castle Point Licensing Policy Document (March 2013)