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Angela Hutchings
Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Tuesday, 17th October 2023, at 11:00 am
Venue:	Council Offices, Council Chamber
Membership:	Councillors Greig, Jones & Walter
Officers attending:	David Bland - Legal Adviser Melanie Harris - Head of Licensing & Safer Communities
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 M**

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

17 October 2023

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

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

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

2. Background

2.1 Applicant M applied for a Private Hire Driver's Licence in May 2022. The Council refused to progress the application due to the following driving offence:

- Date of Offence: 12 October 2021
CU80 – Breach of requirements as to control of the vehicle, mobile telephone etc
Penalty Points - 6

This conviction means Applicant M does not meet the CPBC Pre Licensing Conditions. The offence was not declared on the application form.

The application was refused on 20 September 2023.

The application form is attached at Appendix 1

The driving licence summary is attached at Appendix 2

3. Castle Point Hackney Carriage and Private Hire Licensing Policy

3.1 Assessment of Previous Convictions

Guidance on assessment of previous convictions was contained within the Department for Transport's (DFT) Statutory Taxi and Private Hire Vehicle Standards released in July 2020. These standards were adopted in full by the Council in November 2020 following a period of consultation and include the following in relation to driving offences:

Offence	Elapsed period before licence should be issued
Conviction for using a hand held mobile phone or device while driving	at least 5 years since completion of sentence imposed

The full Assessment of Convictions is attached at Appendix 3.

- 3.2** 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 M 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.

4. 'Fit and Proper'

- 4.1** 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 M has the above conviction he is not regarded as a fit and proper person to hold a Private Hire Driver's Licence and the Council made the decision to refuse the application.

Applicant M submitted a written appeal against this decision to the Council on 23 September 2023. A copy is attached at Appendix 4.

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 review hearing before the Licensing Sub-Committee. It should be noted that Applicant M 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 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 – Application form
- Appendix 2 – Driving licence summary
- Appendix 3 - Assessment of previous convictions
- Appendix 4 – Appeal letter

Background Papers:

Local Government (Miscellaneous Provisions) Act
1976 http://www.legislation.gov.uk/ukpga/1976/57/pdfs/ukpga_19760057_en.pdf

Department for Transport Statutory Taxi and Private Hire Vehicle Standards
2020 [Statutory taxi and private hire vehicle standards - GOV.UK](https://www.gov.uk/government/publications/statutory-taxi-and-private-hire-vehicle-standards-2020)
(www.gov.uk)

CPBC Hackney Carriage and Private Hire Policy



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

Date received	PHD number		
Name			
Address			
Age and DOB	phone	email	
Present occupation and employer <i>Unemployed</i>			
Do you currently hold or have you previously held a licence with another authority? <i>TFL (expired)</i>			
Have you ever been refused a licence or had a licence revoked or suspended? <i>NO</i>			
How long have you held a full licence to drive a motor vehicle? <i>33</i>			
Have you spent a period of 3 continuous months or more, since the age of 18 years, living or working outside the United Kingdom.			
Yes <input type="checkbox"/> - Please provide dates No <input checked="" type="checkbox"/>			
If you answered YES please provide evidence of a criminal record check or Certificate of Good Character from the country/countries covering the relevant period			

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

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
<i>[Signature]</i>	<i>19/5/22</i>



Driver & Vehicle Licensing Agency

Licence summary

This was the latest information held when the driving licence summary was generated.

Driving licence number:
XXXXXXXXX113DA6GL

Licence issue number:
99

Licence valid from:
25 August 2023

Licence valid to:
9 January 2033

Check code:
rq yJ vM 5X

This code is now invalid and cannot be used again.

Date summary viewed:

20 September 2023 14:06

Driving Status

Current full licence

Endorsements

1

Offences

6

Points

Endorsements

CU80

Penalty points:
6

Offence date:
12 October
2021

Expiry date:
12 October
2024

Description:

Breach of requirements as to control of the vehicle, mobile telephone etc

Digital Tachograph Card

Card status	Card valid from	Card valid to	Card number
Valid	6 September 2023	16 September 2026	DB16243162031211

Certificate of Professional Competence (CPC)

Category	End date
C1 	24 August 2026
C1E 	24 August 2026

What to do if you need to see this information again

Ask the person who shared their licence with you for a new check code in order to see the licence information again.



Assessment of Previous Convictions

Legislation specifically identifies offences involving dishonesty, indecency or violence as a concern when assessing whether an individual is fit and proper. The following reflects this.

Each case will be considered on its own merits and applicants / licensees are entitled to a fair and impartial consideration of their application.

Where a period is given below it will be taken to be a **minimum** in considering whether a licence should be granted or renewed in most cases. This puts passenger safety first while enabling past offenders to sufficiently evidence that they have rehabilitated.

Offence	Elapsed period before licence should be issued
Crimes resulting in death	Never licensed
Exploitation Convicted of a crime involving, related to, or has any connection with abuse, exploitation, use or treatment of another individual irrespective of whether the victim or victims were adults or children. Slavery, Child Sexual Abuse, Exploitation, Grooming, Psychological, Emotional or Financial Abuse. This is not an exhaustive list	Never licensed
Sexual offences Conviction for any offence involving or connected with illegal sexual activity Any applicant currently on the Sex Offenders Register or any barred list	Never licensed Never licensed
Offences involving violence against the person Conviction for an offence of violence against the person, or connected with any offence of violence	At least 10 years since completion of sentence imposed
Possession of weapon Conviction of possession of a weapon or any	At least 7 years since completion

other weapon related offence	of sentence imposed
Dishonesty Conviction for any offence where dishonesty is an element of the offence	At least 7 years since completion of sentence imposed
Drugs Conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply Conviction for possession of drugs, or related to the possession of drugs	At least 10 years since completion of sentence imposed At least 5 years since completion of sentence imposed An applicant may also have to undergo drugs testing for a period at their own expense to demonstrate they are not using controlled drugs
Discrimination Conviction involving or connected with discrimination in any form	At least 7 years since completion of sentence imposed
Motoring Convictions It is accepted that offences can be committed unintentionally, a single minor traffic offence would not prohibit granting a licence or revocation of an existing licence providing the authority considers that the licensee remains a fit and proper person Applicants with multiple motoring convictions	Indicates that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally
Drink driving / driving under the influence of drugs Conviction for drink driving Conviction for driving under the influence of drugs	At least 7 years since completion of sentence imposed At least 7 years since completion of sentence imposed. An applicant may also have to undergo drugs testing for a period at their own

	expense to demonstrate they are not using controlled drugs
Using a hand held device whilst driving Conviction for using a hand held mobile phone or device whilst driving	At least 5 years since completion of sentence imposed

Castle Point Borough Council,
Licensing Department,
Council Offices,
Kiln Road,
Thundersley, Benfleet,
Essex, SS7 1TF.
21st September 2023

Dear Sir/Madam,

Re: Refusal to grant Private Hire Drivers Licence.

I am writing to you with regards to the above issue, I would like to highlight the following mitigating circumstances.

I was driving to London on the M11, to my daughters following an urgent phone call from her saying she was having her baby at home and was awaiting the ambulance and to get there as quickly and safely as possible as she was on her own.

I usually drive a "hands free" vehicle, but unfortunately not on this occasion, the urgency of the call clouded my judgement for a split second, something I have regretted ever since.

I have never had points on my licence before and this is the first occasion, as you can see it was in Oct 2021, two years ago and was not aware that the points issued would affect me obtaining a licence from yourselves.

Therefore, I am requesting that you kindly look into my application once again.

Trusting to hear from you in the very near future.

Yours sincerely,