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David Marchant LLB (Hons) BSc (Hons) CEng FICE FCMI
Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Tuesday, 19th November 2019 at 11.30am.
Venue:	Council Chamber
Membership:	Councillors Cross, E. Egan and Greig
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**

LICENSING SUB COMMITTEE

19 November 2019

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 applied to the Licensing Department in August 2019 for a Private Hire Driver's Licence. The Council refused to grant the application because S has the following convictions:

- Breach of Non-Molestation Order (21/1/18)
- Breach of Non-Molestation Order (1/2/18)
- Breach of Non-Molestation Order (15/2/18)
- Breach of Non-Molestation Order (11/3/18)

A copy of these convictions is attached at Appendix 1.

The application for a Private Hire Driver's Licence dated 20/08/19 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 a driver's licence and the Council made the decision to refuse the application.

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 S 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 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.

Appendices

Appendix 1 – DBS certificate

Appendix 2 – Application form

Background Papers:

Local Government (Miscellaneous Provisions) Act 1976

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

Date: 20/08/19



PHD No. _____

Application for a Private Hire Driver's/~~Restricted Private Hire Driver's~~ Licence
(*Delete as appropriate)

Title _____

Surname _____

Forename(s) _____

Address _____

Postcode _____

Tel no. _____

Email address _____

Date and place of birth _____

Present occupation _____

Present employer _____

Have you ever been refused a Hackney Carriage or Private Hire Driver's Licence? NO

If 'Yes', please give expiry date and proprietor NO

How long have you held a full licence to drive a motor vehicle? 5 Years

Have you ever been convicted in court or received any fixed penalty notices? Yes ☒ No ☐

If 'Yes', details of all convictions other than 'spent' convictions, must be shown below any inaccuracy may prejudice the issue of a licence. Are there any court or other proceedings pending against you? _____

Offence	Court	Date	Penalty

Name of Private Hire proprietor _____ Circuit _____
*If applicable

I hereby confirm that the applicant will be employed by me as a Private Hire Driver or Restricted Private Hire Driver, subject to the Council issuing a licence for that purpose.

Signature of Private Hire Proprietor *If applicable _____

I declare that my answers to the questions above are true to the best of my knowledge. I understand that if I have made an omission or statement I know to be false, my application may be refused without further consideration or if a licence has been issued it will be liable to immediate suspension. I have read and understood the Pre-Licensing Standards and Conditions contained in the Policy document.

Signed _____ Date 20/8/19.

The information supplied on this form will be held on a computer. Castle Point Borough Council may use this information to check other information supplied by you to the Council. The Council may from time to time disclose some of this information in accordance with the Data Protection Act 1984.

Private Hire Driver's/Restricted Private Hire Driver's Licence

Pre Licensing Standards

In order that your application may be considered and a licence issued, you will be required to:-

- a) Present with this form, the appropriate fee, your full DVLA driving licence and proof of the right to work in the UK, this may be a passport or other right to work documentation. (Photocopies will not be accepted).
- b) Undertake a medical examination, which can be completed by the applicant's choice of General Practitioner of Group 2 standard or by a provider who regularly holds appointments at the Council Offices (ask for details) and at your own expense (medical forms can be obtained from the Licensing Unit). Once the form has been completed by a doctor it should be returned to the Licensing Unit. A medical certificate will be returned after the examination of your form confirming that you are medically fit or requesting that you attend for a further examination. A medical examination will be required on first application and thereafter every five years (as set by the Council) until the age of 65 years when a medical will be required every year on your birthday. The Council reserves the right to request additional medical examinations at any time.
- c) Undergo a knowledge test of the streets in the whole of the Borough of Castle Point, Byelaws and conditions of licence and be the holder of a Drivers Standard Agency (DSA) pass certificate for Hackney Carriage and Private Hire assessment or a current holder of an advanced driving certificate from an officially recognised body, once an applicant has reached 65 years of age this will also be required every three years. This will be at the applicants own expense. (Where an application is made for a Restricted Private Hire Driver's Licence only a driving assessment is required)
- d) Supply the names and addresses of two people for character references (only required upon initial application)
- e) Submit a completed Disclosure of Criminal Records form which must show any convictions other than "spent" convictions. Omissions or incorrect statements of a serious nature will render the licence liable to immediate suspension. A routine check will be carried out on applicants on initial application and then every three years.
- f) Submit an accreditation certificate on Disability Discrimination Awareness Training.
- g) Be over 21 years of age, and have held a full driver's licence for at least three years.
- h) Not have been convicted or cautioned of a serious criminal offence during the previous three years.
- i) Not have been convicted of three or more motoring offences during the previous three years.
- j) Not have been convicted of a serious criminal offence (e.g., causing grievous bodily harm) or a sexual offence during the previous seven years

If your application is approved and all of the Council's requirements are met you will be issued with a licence. The Council's Licences are issued subject to conditions which you must read carefully (these are set out in the Council's policy document which can be obtained from the Licensing Unit).

You may render yourself liable to prosecution for an offence if you fail to comply with the conditions of your licence. Castle Point Borough Council reserves the right to vary these conditions or impose further conditions at any time.

All relevant facts will be taken into account when consideration is given to an application for a drivers licence. Each application will be considered on its own merit and where any doubt exists the applicant will be interviewed by an officer of the Licensing Unit. Any applicant refused a drivers licence on the grounds that the applicant is not a fit and proper person to hold such a licence has a right of appeal initially to the Licensing Sub Committee and the subsequently to the Magistrates Court.

Private Hire Driver's and Restricted Private Hire Drivers Licences are renewable tri-annually as set by the Council.

Fees

Private Hire Driver's*/Restricted Private Hire Driver's Licence*	£	
*Delete as appropriate		
+ DBS Fee	£	Total £

Please return this form to CPBC, Council Offices, Kiln Road, Benfleet, Essex, SS7 1TF

The information supplied on this form will be held on a computer. Castle Point Borough Council may use this information to check other information supplied by you to the Council. The Council may from time to time disclose some of this information in accordance with the Data Protection Act 1984.

If you would like a copy of this document in large print, audio tape, Braille, a different format or language please contact the Licensing Unit 01268 882480.

PRIVATE & CONFIDENTIAL

Our Ref : E214959



08/05/2019

TO WHOM IT MAY CONCERN

RE : Community Order made at Basildon Magistrates Court on 25/10/2018 for 12 months Requirements:- Unpaid Work 150 hours. RAR 30 days

I write in respect of the above named.

I wish to confirm that [redacted] successfully completed ~ 150 hours Unpaid Work on 03/03/2019. Mr Sean also successfully completed his 30 RAR Days by attendance at the Change Project in Southend. This is a course designed for the prevention of Domestic Violence, held over 27 weekly sessions.

The programme was completed in full on 7th May 2019. Confirmation letter attached from Change Project facilitator.

An application has now been made to the Court for revocation of the remaining period of this Community Order, on grounds of good progress. Hopefully this will be heard by the Court within the next couple of weeks.

Yours sincerely

Lesley Summerhayes
Responsible Officer



Essex CRC - Civic 2 Victoria Avenue Southend-on-Sea Essex SS2 6ER
Tel: 0345 608 0211
The Essex Community Rehabilitation Company Limited – No. 08802550 England & Wales
Registered Office - One Southampton Row - London - WC1B 5HA
CRC Director Alex Osler

www.sodexo.com



changing lives reducing crime



DBS Fee Charged

Certificate Number

001676674930

Date of Issue:

15 OCTOBER 2019

Applicant Personal Details

Employment Details

Surname

Position applied for:

OTHER WORK FORCE PRIVATE HIRE DRIVER

Forename(s):

Name of Employer:

Other Names:

Date of Birth:

Countersignatory Details

Place of Birth:

Registered Person/Body:

CASTLE POINT BOROUGH COUNCIL

Gender:

Countersignatory:

KEVIN HEMSWORTH

Police Records of Convictions, Cautions, Reprimands and Warnings

Surname:

Last known occupation:

Forename(s):

Alias Name(s):

NONE RECORDED

Gender:

Alias Date of Birth:

NONE RECORDED

Birth Details:

Conviction Details

Conviction:

Date of Conviction:

14 FEBRUARY 2018

Offence:

BREACH OF NON-MOLESTATION ORDER

ON 21 JANUARY 2018

FAMILY LAW ACT 1996 S.42A

Disposal:

NO SEPARATE PENALTY

1 BREACH OF NON-MOLESTATION ORDER

ON 01 FEBRUARY 2018

FAMILY LAW ACT 1996 S.42A

FINE 150.00

COSTS 85.00

VICTIM SURCHARGE 30.00

Conviction:

Date of Conviction:

27 APRIL 2018

Court:

SOUTH ESSEX MAGISTRATES

Offence:

BREACH OF NON-MOLESTATION ORDER

ON 11 MARCH 2018

FAMILY LAW ACT 1996 S.42A

Disposal:

COMMUNITY ORDER 24/10/19

UNPAID WORK REQUIREMENT

REHABILITATION ACTIVITY REQUIREMENT

ORDER REVOKED 25/07/19

THIS CERTIFICATE IS NOT EVIDENCE OF IDENTITY

Continued on page 2

Conviction: 3	Date of Conviction: 13 SEPTEMBER 2018	Court: SOUTH ESSEX MAGISTRATES
1	Offence: BREACH OF NON-MOLESTATION ORDER ON 15 FEBRUARY 2018 FAMILY LAW ACT 1996 S.42A	Disposal: COMMUNITY ORDER 24/10/19 COSTS 500.00 UNPAID WORK REQUIREMENT VICTIM SURCHARGE 85.00 REHABILITATION ACTIVITY REQUIREMENT ORDER REVOKED 25/07/19

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