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Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Monday, 21 October 2019 at 11.00am.
Venue:	Council Chamber
Membership:	Councillors E. Egan, Greig and 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 B**
The report of the Head of Licensing and Safer Communities is attached.
- 4. Decision**

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LICENSING SUB-COMMITTEE
PROCEDURE FOR TAXI DRIVER APPEAL

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

21st October 2019

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

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

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

2. Background

Applicant B applied to the Licensing Department in July 2019 for a Private Hire Driver's Licence. The Council refused to grant the application because B has a number of previous convictions as follows:

- Driving otherwise than in accordance with a licence (21/09/99)
- Using vehicle with no test certificate (21/09/99)
- Fraudulently using a vehicle licence (21/09/99)
- Having article with blade or which was sharply pointed in a public place (27/01/00)
- Possessing controlled drug – Class A Heroin (22/11/01)
- Using vehicle while uninsured (15/01/02)
- Possessing controlled drug – Class B Cannabis (15/01/02)
- No Insurance (18/02/02)
- Driving whilst disqualified (18/02/02)
- Using vehicle while uninsured (02/10/03)
- Driving whilst disqualified (02/10/03)
- Failing to surrender to custody at appointed time (01/05/04)
- Railway fraud (01/05/04)
- Possession controlled drug – Class A Heroin (07/05/05)
- Failing to surrender to custody at appointed time (27/04/05)
- Resist or obstruct constable (27/04/05)
- Failing to surrender to custody at appointed time (27/09/05)
- Possessing controlled drug – Class C Cannabis (26/11/07)
- Failing to surrender to custody at appointed time (26/11/07)

- Obstructing powers of search for drugs (26/11/07)
- Possessing controlled drug – Class A Heroin (26/08/10)
- Possessing controlled drug – Class B Cannabis (20/10/11)
- Using vehicle while uninsured (20/10/11)
- Driving otherwise than in accordance with a licence (20/10/11)

A copy of these convictions is attached at Appendix 1.

The application for a Private Hire Driver's Licence dated 25/07/19 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 B 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 B 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.

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

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P*

000005886300002 10 10390

Enhanced Certificate

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Disclosure &
Barring Service

DBS Fee Charged

Certificate Number 001672335825

Date of Issue: 12 SEPTEMBER 2019

Applicant Personal Details**Employment Details**

Surname

Position applied for:

OTHER WORKFORCE PRIVATE HIRE DRIVER

Forename(s)

Name of Employer:

SELF EMPLOYED

Other Names: NONE DECLARED

Date of Birth:

Countersignatory Details

Place of Birth:

Registered Person/Body:

CASTLE POINT BOROUGH COUNCIL

Gender:

MALE

Countersignatory:

SHARON BURKE

Police Records of Convictions, Cautions, Reprimands and Warnings

Surname

Last known occupation:

CLERK

Forename(s)

Alias Name(s):

None

Gender:

MALE

Birth Details:

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

Date of Conviction:

21 OCTOBER 1999

Court:

HARINGEY MAGISTRATES

Offence:

Disposal:

1 DRIVING OTHERWISE THAN IN
ACCORDANCE WITH A LICENCE

FINE 20.00

ON 19 SEPTEMBER 1999

COSTS 30.00

ROAD TRAFFIC ACT 1988 S.87(1)

2 USING VEHICLE WITH NO TEST

FINE 15.00

ON 19 SEPTEMBER 1999

ROAD TRAFFIC ACT 1988 S.47(1)

3 FRAUDULENTLY USING A VEHICLE

FINE 15.00

ON 19 SEPTEMBER 1999

VEHICLE EXCISE AND REGISTRATION

ACT 1994 S.44(1)

Conviction: 2	Date of Conviction: 07 JANUARY 2000	Court: ISLINGTON JUVENILE
1	Offence: HAVING ARTICLE WITH BLADE OR WHICH WAS SHARPLY POINTED IN PUBLIC PLACE ON 27 OCTOBER 1999 CRIMINAL JUSTICE ACT 1988 S.139(1)	Disposal: PROBATION ORDER 12 MTHS COMMUNITY SERVICE ORDER 40 HRS
Conviction: 3	Date of Conviction: 22 NOVEMBER 2001	Court: THAMES MAGISTRATES
1	Offence: POSSESSING CONTROLLED DRUG - CLASS A - HEROIN ON 15 AUGUST 2001 MISUSE OF DRUGS ACT 1971 S.5(2)	Disposal: FINE 150.00 FORFEITURE/CONFISCATION
Conviction: 4	Date of Conviction: 15 JANUARY 2002	Court: WALTHAM FOREST MAGISTRATES
1	Offence: USING VEHICLE WHILE UNINSURED ON 09 JANUARY 2002 ROAD TRAFFIC ACT 1988 S.143(2)	Disposal: FINE 100.00 DISQUALIFICATION FROM DRIVING 6 MTHS DRIVING LICENCE ENDORSED
2	Offence: POSSESSING CONTROLLED DRUG - CLASS B - CANNABIS ON 09 JANUARY 2002 MISUSE OF DRUGS ACT 1971 S.5(2)	Disposal: FINE 100.00 COSTS 40.00 FORFEITURE/CONFISCATION & DESTRUCTION OF DRUGS
Conviction: 5	Date of Conviction: 18 FEBRUARY 2002	Court: THAMES MAGISTRATES
1	Offence: NO INSURANCE ON 16 FEBRUARY 2002 ROAD TRAFFIC ACT 1988 S.143(2)	Disposal: NO SEPARATE PENALTY DRIVING LICENCE ENDORSED
2	Offence: DRIVING WHILST DISQUALIFIED ON 16 FEBRUARY 2002 ROAD TRAFFIC ACT 1988 S.103(1)(B)	Disposal: COMMUNITY PUNISHMENT ORDER 100HRS DRIVING LICENCE ENDORSED DISQUALIFICATION FROM DRIVING 6 MTHS
Conviction: 6	Date of Conviction: 02 OCTOBER 2003	Court: THAMES MAGISTRATES
1	Offence: USING VEHICLE WHILE UNINSURED ON 10 SEPTEMBER 2003 ROAD TRAFFIC ACT 1988 S.143(2)	Disposal: FINE 200.00 OR SERVE 1 DAY (SERVED) DRIVING LICENCE ENDORSED
2	Offence: DRIVING WHILST DISQUALIFIED ON 10 SEPTEMBER 2003 ROAD TRAFFIC ACT 1988 S.103(1)(B)	Disposal: YOUNG OFFENDERS INSTITUTION 3 MTHS - EQ03014523U DISQUALIFICATION FROM DRIVING 6 MTHS DRIVING LICENCE ENDORSED
Conviction: 7	Date of Conviction: 01 MAY 2004	Court: HORSEFERRY ROAD MAGISTRATES
1	Offence: FAILING TO SURRENDER TO CUSTODY AT APPOINTED TIME ON 25 FEBRUARY 2004 BAIL ACT 1976 S.6(1)	Disposal: FINE 50.00
2	Offence: OBTAINING EXEMPTION FROM LIABILITY BY DECEPTION (RAILWAY FRAUD) ON 25 FEBRUARY 2004 THEFT ACT 1978 S.2(1)(C)	Disposal: FINE 50.00 COSTS 55.00
Conviction: 8	Date of Conviction: 17 MAY 2004	Court: THAMES MAGISTRATES
1	Offence: POSSESSING CONTROLLED DRUG -	Disposal: COMMUNITY REHABILITATION ORDER 12 MTHS

CONTINUATION SHEET

Applicant Personal Details

Surname:

Forename(s):

Date of Birth:

Certificate Number:

001672335829

Date of Issue:

12 SEPTEMBER 2019

00005686300002 1020300

Enhanced Certificate

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Disclosure & Barring Service

Conviction: 9	Date of Conviction: 27 APRIL 2005	Court: CENTRAL HERTFORDSHIRE MAGISTRATES
Offence: 1 Failing to surrender to custody at appointed time on 31 March 2005 BAIL ACT 1976 S.6(1)	Disposal: FINE 25.00 DETENTION 1 DAY DEEMED SERVED	
2 Resist or obstruct constable on 31 March 2005 POLICE ACT 1996 S.89(2)	FINE 25.00 DETENTION 1 DAY DEEMED SERVED	
Conviction: 10	Date of Conviction: 27 SEPTEMBER 2005	Court: NORTH HERTFORDSHIRE MAGISTRATES
Offence: 1 Failing to surrender to custody at appointed time on 01 September 2005 BAIL ACT 1976 S.6(1)	Disposal: FINE 80.00	
Conviction: 11	Date of Conviction: 26 NOVEMBER 2007	Court: CENTRAL CRIMINAL COURT
Offence: 1 POSSESS CANNABIS A CLASS-C CONTROLLED DRUG ON 02 JUNE 2006 MISUSE OF DRUGS ACT 1971 S.5(2)	Disposal: UNPAID WORK REQUIREMENT 80 HRS CONCURRENT PROGRAMME REQUIREMENT CONCURRENT COMMUNITY ORDER 18 MTHS CONCURRENT FORFEITURE/CONFISCATION DESTRUCTION ORDER OF HALF GRAM OF CANNABIS	
2 Failing to surrender to custody at appointed time on 18 August 2006 BAIL ACT 1976 S.6(1)	UNPAID WORK REQUIREMENT 80 HRS CONCURRENT PROGRAMME REQUIREMENT CONCURRENT COMMUNITY ORDER 18 MTHS CONCURRENT	
Conviction: 12	Date of Conviction: 26 NOVEMBER 2007	Court: CENTRAL CRIMINAL COURT
Offence: OBSTRUCTING POWERS OF SEARCH FOR DRUGS ON 23 MAY 2006 MISUSE OF DRUGS ACT 1971 S.23	Disposal: COMMUNITY SERVICE ORDER 80 HRS UNPAID WORK BEFORE 25TH NOVEMBER 2008	
Conviction: 13	Date of Conviction: 16 AUGUST 2010	Court: THAMES MAGISTRATES
Offence: 1 POSSESSING CONTROLLED DRUG CLASS A - HEROIN ON 13 AUGUST 2010 MISUSE OF DRUGS ACT 1971 S.5(2)	Disposal: FINE 66.00 COSTS 40.00 VICTIM SURCHARGE 15.00 FORFEITURE AND DESTRUCTION OF HEROIN	

Conviction: 14	Date of Conviction: 20 OCTOBER 2011	Court: MID-SOUTH ESSEX MAGISTRATES
1	Offence: POSSESS CONTROLLED DRUG - CLASS B - CANNABIS/CANNABIS RESIN ON 03 OCTOBER 2011 MISUSE OF DRUGS ACT 1971 S.5(2)	Disposal: FINE 67.00 COSTS 85.00 VICTIM SURCHARGE 15.00 FORFEITURE AND DESTRUCTION OF CANNABIS
2	USING VEHICLE WHILE UNINSURED ON 03 OCTOBER 2011 ROAD TRAFFIC ACT 1988 S.143(2)	FINE 100.00 DRIVING LICENCE ENDORSED DISQUALIFIED FROM DRIVING - DISCRETIONARY 12 MTHS
3	DRIVING OTHERWISE THAN IN ACCORDANCE WITH A LICENCE ON 03 OCTOBER 2011 ROAD TRAFFIC ACT 1988 S.87(1)	NO SEPARATE PENALTY DRIVING LICENCE ENDORSED

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.

Date: 25/7/2019

castlepoint

benfleet | canvey | hadleigh | thundersey

PHD No. _____

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

Title Miss, Mrs, Ms, Mr other E

Surname L

Forename(s) 2Y

Address 10

Postcode W

Tel no. 01709 551111

Email address m

Date and place of birth 1.1.1988

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

How long have you held a full licence to drive a motor vehicle? 6 years

Have you ever been convicted in court or received any fixed penalty notices? 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 25/7/2019

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.