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Angela Hutchings
Chief Executive

AGENDA

Committee: LICENSING SUB-COMMITTEE
Date and Time: Thursday, 22 June, at 11:00am
Venue: Council Offices, Council Chamber
Membership: Councillors Acott, Greig and Savage
Officers attending: Benjamin Badura - 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 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

15 June 2023

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 for a Private Hire Driver's Licence in November 2022. 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: 9 March 2017

Offence1: Battery

Disposal: Fine £350 Costs £300 Compensation £250 Victim Surcharge £35

Offence2: Failing to Stop after Accident

Disposal: Fine £250 Driving Licence endorsed 8 penalty points

These convictions were not declared on the application form completed by Applicant S at the beginning of the process.

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. CPBC Policy – Assessment of Previous Convictions

Guidance on assessment of previous convictions was contained within the Department of 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.

The conviction listed above means that Applicant S does not meet the Council's pre licensing requirements.

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

The full Assessment of Previous Convictions is attached at Appendix 3.

4. '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 to progress the application.

Applicant S submitted a written appeal against this decision to the Council on 19 May 2023. A copy is attached at Appendix 4

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 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

Appendix 2 – Application form

Appendix 3 – Taxi Licensing Policy Extract "Assessment of Previous Convictions"

Appendix 4 – Appeal request

Background Papers:

Local Government (Miscellaneous Provisions) Act

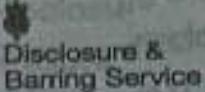
1976 http://www.legislation.gov.uk/ukpga/1976/57/pdfs/ukpga_19760057_en.pdf

Department for Transport Statutory Taxi and Private Hire Vehicle Standards 2020

[Statutory taxi and private hire vehicle standards - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Enhanced Certificate

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DBS Fee Charged

Certificate Number

01 FEBRUARY 2023

Applicant Personal Details

Surname: [REDACTED]

Forename(s): [REDACTED]

Other Names: NONE DECLARED

Date of Birth: [REDACTED]

Place of Birth: [REDACTED]

Gender: MALE

Employment Details

Position applied for:

PRIVATE HIRE DRIVER OTHER WORK FORCE

Name of Employer:

SELF EMPLOYED CPBC

Countersignatory Details

Registered Person/Body:

CASTLE POINT BOROUGH COUNCIL

Countersignatory:

MELANIE HARRIS

Police Records of Convictions, Cautions, Reprimands and Warnings

Surname:

Last known occupation:

Forename(s): [REDACTED]

DIRECTOR

Gender:

Alias Name(s):

MALE

NONE RECORDED

Birth Details:

Alias Date of Birth:

[REDACTED]

NONE RECORDED

Conviction Details

Conviction: 1 Date of Conviction: 09 MARCH 2017

Court: CENTRAL LONDON MAGISTRATES

BATTERY
ON 20 NOVEMBER 2016
CRIMINAL JUSTICE ACT 1988 S.39

Disposal:
FINE 350.00
COSTS 300.00
COMPENSATION 250.00
VICTIM SURCHARGE 35.00
FINE 250.00
DRIVING LICENCE ENDORSED 8 PENALTY POINTS

2 FAILING TO STOP AFTER ACCIDENT
ON 20 NOVEMBER 2016
ROAD TRAFFIC ACT 1988 S.170(4)

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

NONE RECORDED



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

Office use		
Date received	PHD number	
Name	J. M. M. 1234567890	
Address	1, High Street, IV 1 25	
Date of birth	phone	email
Present occupation and employer Chef Sales Officer		
Do you currently hold or have you previously held a licence with another authority? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If yes you may need to provide an HMRC tax check code to us</i>		
Have you ever been refused a licence or had a licence revoked or suspended? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If yes please give details</i>		
Please tick to confirm you have held a full DVLA licence to drive a motor vehicle for 3 years or more <input checked="" type="checkbox"/>		
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 checked="" type="checkbox"/> - Please provide dates No <input type="checkbox"/> 2004 Egypt		
If yes please provide evidence of a criminal record check or Certificate of Good Character from the country/countries covering the relevant period		
Is English your first language? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>If no you will need to provide evidence of appropriate level or complete a test</i>		

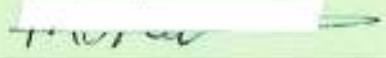
Have you ever been convicted in court or received any fixed penalty notices?
Yes No

If yes give details of all convictions, fixed penalty notices, current points on licence or any court or proceedings pending against you.

Offence	Court	Date	Penalty

Please continue on a separate sheet if required

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
	25/11/2022

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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	At least 10 years since completion of sentence imposed
Conviction for possession of drugs, or related to the possession of drugs	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	At least 7 years since completion of sentence imposed
Conviction for driving under the influence of drugs	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

Date: 18.05.2023

Dear Sirs,

On 21st of April 2023 the Principal Licensing Officer rejected my application for a hackney carriage driver's licence.

why you think this is a wrong decision.

I feel aggrieved at this decision and want the Council's Licensing Sub Committee to reconsider my application.

Licensing officer have rejected my application due to the conviction dated 20th November 2016. This is single summary offense for which I was fined a total of £885.00. along with the cost order of £300.00.

I have been a professional driver completing about 1,500 kilometres a week whilst driving intercity. Throughout the years I have provided professional chauffeuring services to numerous diplomat/business communities including diplomats from Qatari embassies and other diplomat throughout the years. This offence is one which I sincerely regret.

I been driving for 25 years. During this time, I have always strived to follow the road rules and prides myself on good driving record.

I have expressed my great disappointment about committing the offence before the court and this offence has not only affected me personally but regrettably have also affected me professionally. I am a full-time driver and relies on my income to support my family.

Aside for the offence stated on my DBS I have not been involved in any other offence and as per the Rehabilitation of Offenders Act 1974 (ROA), eligible convictions (such as mine) become 'spent' after a specified period of time (1 year in my case), known as the 'rehabilitation period'.

I am willing to do anything possible including a commitment to probationary period to satisfy this requirement.