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AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Thursday 8th August 2019 at 3.30pm.
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:	Cheryl Salmon, Ext. No. 2454

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 XYZ**
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

8 August 2019

Subject: Decision regarding the suspension of a Private Hire Driver's Licence – XYZ

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

To consider the suspension of the Private Hire Driver's Licence of XYZ

2. Background

XYZ attended the Licensing Department in March 2019 to apply for a Private Hire Driver's Licence.

The application for a Private Hire Driver's Licence is attached at appendix 1. It was considered and the licence issued.

On 4 June 2019 the Council received information that XYZ had previously held a driver's licence with another local authority from 2016 to 2017 and that this had been revoked upon receiving information from Essex Police. The grounds for revocation were that XYZ did not meet the 'fit and proper' criteria to hold a licence. XYZ did not appeal this decision at the time. In March 2019 XYZ made a new application to the same licensing authority and the application was refused.

In the same month XYZ applied to this authority and did not declare that he had previously had a driver's licence revoked by another licensing authority and therefore the licence was issued.

The Council's Hackney Carriage and Private Hire Licensing Policy states that:

"The applicant must declare any other relevant information (e.g. previously had a hackney carriage or private hire drivers licence revoked by a Licensing Authority)".

The Hackney Carriage and Private Hire Policy was adopted to maintain the safety of public transport vehicles, drivers and paying customers. Failure to abide with the requirements of the Policy puts the safety of drivers and passengers at risk.

As XYZ failed to declare this on the application form and therefore failed to comply with the policy the licence was suspended on 6 June 2019 with immediate effect pending further investigation.

The legislation relating to the suspension of a licence falls under Section 61(1) (b) Local Government (Miscellaneous Provisions) Act 1976 (LGMPA). Under this Section a licensing authority can suspend, revoke or refuse to renew a driver's hackney carriage or private hire licence on any of the following grounds:

1. That he has since the grant of the licence—

been convicted of an offence involving dishonesty, indecency or violence; or been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this Part of this Act;

2. that he has since the grant of the licence been convicted of an immigration offence or required to pay an immigration penalty; or

3. any other reasonable cause.

Under section 61(2B) a licensing authority has the power to revoke or suspend a hackney carriage or private hire driver's licence with immediate effect.

In addition to failure to comply with the policy the Council has received information that brings into question whether XYZ is a fit and proper person.

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.'

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

XYZ 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) Reinstatement the Private Hire Driver's Licence.
- (ii) Reinstatement the Private Hire Driver's Licence subject to appropriate conditions.
- (iii) Revoke 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 – Application form

Appendix 2 – Extract of Castle Point Borough Council Hackney Carriage & Private Hire Licensing Policy

Background Papers:

None



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

For office use only	
Date received	
Fee	
Receipt no	
DBS sent	
DBS returned	
Driver No	
App complete	
Date issued	
Lalpac	
IR	
Expiry date	
Payment log	
Letter book	
Signed	

Surname [REDACTED]
 Forename(s) [REDACTED]
 Title Miss, Mrs, Ms, Mr other _____
 Address [REDACTED]
Southend-on-Sea
 Postcode [REDACTED]
 Tel no. [REDACTED]

Present occupation Delivery driver
 Present employer Wongs TAKADAY
 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? 12
 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
<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

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 [REDACTED] Date 11.03.2019

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.

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 £

For Office Use Only	Date	Signed
I confirm that I have independently checked that the application has been properly assessed, is supported by the relevant, necessary evidence, all payments have been received and posted on efin and that all of the above actions have been completed before the process has been automated.		
Signed by either the Head of Licensing & Safer Communities or the Strategic Director of Corporate Services		

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

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.

Hackney Carriage/Private Hire Drivers Licence

Pre-licensing standards

A person being considered for a combined private hire/hackney carriage badge or a private hire badge shall:-

- 1 For the combined hackney carriage/private hire drivers licence pass a knowledge test designed to ensure that they have sufficient knowledge to provide a safe and reliable service to the travelling public. A person that does not attain the pass mark on retest and wishes to take a further test will be required to pay a fee for each subsequent occasion
- 2 Be the holder of a drivers assessment pass certificate for hackney carriage and private hire vehicles, a current PSV (Public Service Vehicle) licence or a holder of an advanced driving certificate from an officially recognised body. This will be at the applicants own expense.
- 3 Complete an application form on which must be shown any convictions. Omissions or incorrect statements of a serious nature will render the licence liable to immediate suspension. (Please see appendix 10).
- 4 The council may require a driver to take a retest on the knowledge and byelaws or a driving assessment at any time at the discretion of the Head of Licensing and Safer Communities.
- 5 Be over twenty-one years of age.
- 6 Be vetted by the Vetting and Barring Service upon application and subsequently upon renewal of the licence. Applicants are required to complete a form for this purpose which will be in the application pack together with details of the appropriate fee.
- 7 Pass a medical examination carried out by any medical practitioner of Group 2 standard and produce a medical report in the form provided by the Council. This will be at the applicants own expense.
- 8 Where an applicant currently holds, or has previously held a badge with another authority the Council will vet the application through a local authority check.
- 9 Produce current original documents for inspection which fall in line with those requested for the DBS checks, e.g., passport, birth or marriage certificate, drivers licence, P60 or P45.
- 11 Have held a full licence to drive a motorcar for not less than three years immediately prior to making the application for a driver's badge.
- 12 Not have been convicted of three or more motoring offences in the previous three years.

- 13 Not have been convicted of a Criminal offence during the previous three years.
- 14 Not have been convicted of a serious criminal offence e.g. causing grievous bodily harm or sexual offence during the previous seven 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 twelve months.
- 16 Give two referees as to character who are not related to the applicant but whom know the applicant personally.
- 17 To undertake training on disability discrimination awareness and to produce an accredited certificate to confirm this.
- 18 All new applicants will undertake a DVLA (Driver and Vehicle Licensing Agency) check to confirm their driving history. This condition will also apply to all drivers on renewal of their licence.
- 19 The applicant must declare any other relevant information (e.g. previously had a hackney carriage or private hire drivers licence revoked by a Licensing Authority).
- 20 The applicant must present, in person, the application form together with all relevant documentation and fees to the Council.
- 21 All relevant facts will be taken into account when consideration is given to an application for a hackney carriage or private hire driver's licence and it may be that additional or higher standards will be imposed.
- 22 A person being considered for a driving licence who has not renewed their licence during the previous three months shall be treated as a person being considered for a licence on the first occasion, unless there are proven medical reasons why the applicant has been unable to renew the licence. Each case will be considered on its own merit.
- 23 Any person who disagrees with a decision of the Council to refuse to grant a licence has the right to appeal initially to the Licensing Sub Committee but subsequently to Southend Magistrates court within 21 days of that decision.