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Angela Hutchings
Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Thursday, 9th February 2023, at 10am
Venue:	Council Offices, Council Chamber
Membership:	Councillors A. Acott, C. Mumford & R. Savage
Officers attending:	Benjamin Badura – Legal Adviser Andrew Smith – Training Principal & 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 F**

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

9 February 2023

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

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

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

2. Background

Applicant F applied for a Private Hire Driver's Licence in October 2022. The Council refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate because Applicant F has the following convictions:

Date of conviction: 12 May 2014

Offence: Battery

Disposal: Conditional Discharge 1 year. Costs £650 Victim Surcharge £15

A copy of the DBS certificate is attached at Appendix 1.

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 by The Council in November 2020 following a period of consultation.

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

The Assessment of Previous Convictions is attached at Appendix 2.

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 F 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 F submitted a written appeal against this decision to the Council on 18 January 2023. A copy is attached at Appendix 3

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 F 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 – Taxi Licensing Policy Extract "Assessment of Previous Convictions"

Appendix 3 – Appeal request

Background Papers:

Local Government (Miscellaneous Provisions) Act

1976http://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)

STRICTLY PRIVATE AND CONFIDENTIAL



Enhanced Certificate

Page 1 of 2



Disclosure & Barring Service

DBS Fee Charged

Certificate Number

Date of Issue:

01 DECEMBER 2022

Applicant Personal Details

Employment Details

Surname:

Forename(s):

Other Names: NONE DECLARED

Date of Birth: 28 SEPTEMBER 1958

Place of Birth: HAMMERSMITH

Gender: MALE

Position applied for:
OTHER WORK FORCE PRIVATE HIRE DRIVERName of Employer:
SELF EMPLOYED

Countersignatory Details

Registered Person/Body:
CASTLE POINT BOROUGH COUNCILCountersignatory:
MELANIE HARRIS

Police Records of Convictions, Cautions, Reprimands and Warnings

Surname:

Gender:

Date of Birth:

28 SEPTEMBER 1958 HAMMERSMITH

Last known occupation:

SELF EMPLOYED

Alias Name(s):

NONE RECORDED

Alias Title of (DBP):

NONE RECORDED

Conviction Details

Conviction:

Date of Conviction:

12 MAY 2014

Court:

WEST LONDON MAGISTRATES

Conviction:

BATTERY

ON 18 NOVEMBER 2013

CRIMINAL JUSTICE ACT 1995 S.39

Disposal:

CONDITIONAL DISCHARGE, 1 YR

COSTS £50.00

VICTIM SURCHARGE 15.00

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

NONE RECORDED

DBS Children's Barred List Information

NONE RECORDED

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	May indicate 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
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SS7 1TF

18th January 2023

Dear Sir/Madam,

Application for PH Drivers Licence

Thank you for your letter dated 4th January 2023.

Please accept this letter as formal appeal against your decision to refuse my licence application based on a recorded conviction in 2014 showing on my DBS certificate.

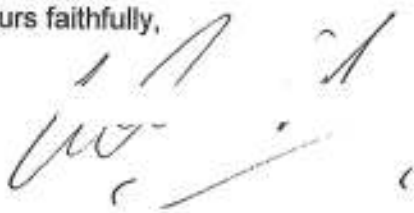
The conviction recorded was for a 'minor' domestic incident back in 2013 when I was going through a very acrimonious divorce. My wife at the time seized the opportunity to have me removed from what was my own home. My children who were present at the time were too young to testify and I certainly would not have wanted that. However, both of my sons are very willing to offer a statement now, stating that the incident was fabricated by my ex-wife.

I am of good character and have held a licence with TFL since April 2019 with not even a motoring offence to my name.

Whilst I am aware that your time limit has been changed to ten years this alleged offence was ten years ago and the end of the sentence which was a conditional discharge of one year.

Hopefully this information will be sufficient in you being able to reverse your refusal. Should you require any further information I will be pleased to oblige.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'M. J.', written over a horizontal line.