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Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Monday, 10 August 2020 at 11:30am.
Venue:	Council Chamber
Membership:	Councillors Acott, Isaacs & Skipp
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 Taxi Driver's Licence – Applicant D**
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

LICENSING SUB COMMITTEE

10 August 2020

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

Report of: Head of Licensing and Safer Communities

1. Purpose of Report

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

2. Background

Applicant D applied to the Licensing Department in July 2020 for a Private Hire Driver's Licence. The Council refused to progress the application because Applicant D has the following convictions:

- Driving a motor vehicle with excess alcohol (19/02/1998)
- Possession of a Class B Drug – Cannabis Resin (15/01/2004)
- Using vehicle with no test certificate (15/01/2004)
- Using vehicle while uninsured (15/01/2004)

A copy of the DBS is attached at Appendix 1.

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. '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 D has been convicted of the above offences he is not regarded as a fit and proper person to hold an operator's licence or 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 D 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

Background Papers:

Local Government (Miscellaneous Provisions) Act 1976

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

Enhanced Certificate

Page 1 of 4

Disclosure & Barring Service

BS Fee Charged

Certificate Number

Date of Issue:

15 MAY 2021

Applicant Personal Details

urname

orename(s)

ther Names: NONE DECLARED

ate of Birth:

lace of Birth:

ender: MALE

Employment Details

Position applied for:
OTHER WORKFORCE TAXI DRIVER

Name of Employer:
SELF EMPLOYED

Countersignatory Details

Registered Person/Body:
BASILDON BOROUGH COUNCIL

Countersignatory:

Police Records of Convictions, Cautions, Reprimands and Warnings

urname

C

orename(s)

ender

MALE

irth Details:

Last known occupation:

SCAFFOLDER

Alias Name(s):

NONE RECORDED

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

1

Date of Conviction:

19 FEBRUARY 1996

Court:

MID-SOUTH ESSEX MAGISTRATES

Offence:

DRIVING A MOTOR VEHICLE WITH
EXCESS ALCOHOL
ON 17 JANUARY 1996
ROAD TRAFFIC ACT 1988 S 5(1)(A)

Disposal:

FINE 80.00
DISQUALIFICATION FROM DRIVING 12 MTHS
DRIVING LICENCE ENDORSED
COSTS 60.00

Conviction:

2

Date of Conviction:

16 JANUARY 2004

Court:

MID-SOUTH ESSEX MAGISTRATES

Offence:

POSSESSION OF A CLASS B DRUG -
CANNABIS RESIN
ON 25 NOVEMBER 2003
MISUSE OF DRUGS ACT 1971 S 5(2)

Disposal:

FINE 75.00
FORFEITURE ORDER THAT CANNABIS RESIN BE
FORFEITED & DESTROYED
COSTS 51.00

Conviction details continue...

Conviction details continue...

Conviction:	Date of Conviction:	Court:
2	15 JANUARY 2004	MID-SOUTH ESSEX MAGISTRATES
	Offence:	Disposal:
2	USING VEHICLE WITH NO TEST CERTIFICATE ON 25 NOVEMBER 2003 ROAD TRAFFIC ACT 1988 S.47(1)	NO SEPARATE PENALTY
3	USING VEHICLE WHILE UNINSURED ON 25 NOVEMBER 2003 ROADTRAFFIC ACT 1988 S.143(2)	FINE 200.00 DRIVING LICENCE ENDORSED 8 PENALTY POINTS

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.



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

Date received 13/7/20	PHD number
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Name and address of applicant

Name J		
Address 4 Is		
Age and DOB	Phone	Email .o.uk

Present occupation and employer
Scaffolder / E J
Have you ever been refused a licence?
Yes
How long have you held a full licence to drive a motor vehicle?
23 years

Have you ever been convicted in court or received any fixed penalty notices?

Yes/No ***Delete as appropriate**

Give details of all convictions, fixed penalty notices or any court or proceedings pending against you.

Offence	Court	Date	Fixed penalty
Drink driving	Mid south Essex Magistrate	19/2/1998	£80 fine plus 1 year driving ban
Possession of class B drug cannabis	Mid south Essex magistrate	15/01/2004	£75 fine
Using vehicle with no test certificate using vehicle while uninsured	Mid south Essex magistrate	15/01/2004	£200 plus 8 points