



Council Offices, Kiln Road,
Thundersley, Benfleet,
Essex SS7 1TF
Tel. No: 01268 882200



Angela Hutchings
Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Thursday, 25th May, at 11:00am
Venue:	Council Offices, Council Chamber
Membership:	Councillors Greig, Palmer 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 B**

The report of the Head of Licensing and Safer Communities is attached.

- 4. Decision**

Agendas and Minutes can be viewed at www.castlepoint.gov.uk
Copies are available in larger print & audio format upon request
If you would like a copy of this agenda in another language or alternative format:
Phone: 0207 520 1431 or email translations@languageline.co.uk



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.

Agendas and Minutes can be viewed at www.castlepoint.gov.uk
Copies are available in larger print & audio format upon request
If you would like a copy of this agenda in another language or alternative format:
Phone: 0207 520 1431 or email translations@languageline.co.uk



When you have finished with
this agenda please recycle it.

LICENSING SUB COMMITTEE

25 May 2023

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 for a Private Hire Driver's Licence in February 2023. He declared a previous conviction and the Council subsequently refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate. Applicant B has the following conviction:

Date of conviction: 17 August 1989

Offence:

Indecent Assault on Female 16 or Over on Sexual Offences Act 1956

Disposal: Bound Over 2 years in the sum of 250

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

The conviction listed on the DBS means that Applicant B 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 B has been convicted of the above offence he is not regarded as a fit and proper person to hold private hire licences and the Council made the decision to refuse to progress the application.

A written appeal against this decision was submitted to the Council on behalf of Applicant B on 2 May 2023. A copy is attached at Appendix 3

5. 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.

6. 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 Licence application
- (ii) Allow the 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

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 \(www.gov.uk\)](https://www.gov.uk/government/statutory-instruments/2020/12/2020-12-20-taxi-and-private-hire-vehicle-standards)

Enhanced Certificate

Page 1 of 2



Disclosure &
Barring Service

DBS Fee Charged

Certificate Number

001823669976

Date of Issue:

22 MARCH 2023

Applicant Personal Details

Surname:

Forename(s):

Other Names: NONE DECLARED

Date of Birth:

Place of Birth: LAHORE PAKISTAN

Gender: MALE

Employment Details

Position applied for:
OTHER WORK FORCE TAXI DRIVER

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:

Forename(s):

Gender:

MALE

Birth Details:

Last known occupation:

NONE RECORDED

Alias Name(s):

NONE RECORDED

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

1

Date of Conviction:

17 AUGUST 1989

Offence:

INDECENT ASSAULT ON FEMALE 16 OR
OVER
ON
SEXUAL OFFENCES ACT 1956 S.14

Court:

SOUTHWARK CROWN

Disposal:

BOUND OVER 2 YRS IN THE SUM OF 250.00

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

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	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 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

SHANTHI & CO.

Solicitors & Commissioners for Oaths

Padmini Senadheera (Partner, Solicitor)
 Shanthi Senadheera (Partner, Solicitor)
 Dinu Senadheera – LLB (Hons.) (F.Inst.L.Ex & Solicitor)
 Thilini Kaluarachchi – LLB (Hons.), LL.M., Solicitor

206 Seven Sisters Road Finsbury Park London N4 3NX

Tel: 020-7561-9494

Fax: 020-7561-9495

Emergency: 07956129642

E-mail: shanthi.co@btconnect.com

VAT No. 672 675 991

Regulated by the Solicitors Regulation Authority

SRA No. 173396 ICO Reg. No. 2 774013X

Castle Point Borough Council
 Licensing Department
 Council Offices, Kiln Road
 Thundersley, Benfleet
 Essex, SS7 1TF

Our ref: Lit/PS/4238/1

Your ref: NK

Date: 02 May 2023

Via Email: licensing@castlepoint.gov.uk

Dear Sirs,

Re: Application for Private Hire Driver's License (Operator)

We are instructed by [redacted] to make representation on his behalf in his Application for Private Hire Driver's License.

We write further to your letter dated 06th April 2023 asking [redacted] to submit an appeal in writing detailing the reasons why he believes he should be issued a licence by you.

Background of the applicant:

[redacted] is 65 years old and has four dependents who wholly depend on his earnings to meet the living costs. [redacted] has worked for Transport for London (TfL) as a Licensed London Private Hire Driver from 2003-2019 without any complaints or issues. Therefore, you are requested to process the Application by considering these representations and issue [redacted] License to work as a Private Hire Driver for Castle Point Borough Council.

We are instructed that you require [redacted] provide an explanation about the circumstances leading to his conviction on his DBS certificate in order to allow you to make an assessment if he possesses good character to meet the requirements of the Regulations.

Circumstances leading to your conviction(s), cautions(s) or driving penalties.

In 1989, [redacted] had recently arrived in the United Kingdom (UK) and was pursuing further studies on a full-time basis. He was offered a part time role as a Shop Assistant at a local grocery shop. [redacted] explains that he, in 1989, was exercising his rights of "citizen arrest in order to prevent a crime i.e. shop lifting" when the claimed victim of alleged assault made a false allegation against him. [redacted] did not have access to an interpreter to be able to gain full appreciations of the nature of the allegations and consequences. Hence, he followed the advice of his then solicitor, and pleaded guilty to the alleged offence, which was, indeed, the wrong decision based on incorrect advice. You will appreciate that [redacted] did not at the time have the benefit of modern-day technologies like CCTV to counter the allegations and clear his name.

Given the length of time that has passed and out of a desire to draw a line under these past events, [redacted] does not wish to dredge up the past and re-litigate this matter. This is particularly important for him as he is now a family man with three minor children and is well known in his locality for being an efficient and dutiful Taxi Driver for the past 28 years approximately.

Any other information that you deem relevant and wish us to consider.

We ask you to consider the fact that _____ is 65 years old of which a considerable time of more than 33 years has elapsed since he, on the basis of misconceived advice, had chosen to plead guilty and no further and/or subsequent matters/allegations of a similar nature nor even falling under different category have ever been made against him since this one unfortunate event.

Accordingly, we would invite you to consider that a decision to decline _____, a license would be a disproportionate response to an unsafe conviction of 33 years old.

This is particularly important when, as explained at the beginning of this letter, _____ has four dependants that rely on his license as a taxi driver to survive. _____ does not have any other skills to engage in any other commercial activity or employment.

We trust this is sufficient for your purposes. Should you require further information please do not hesitate to contact us. Kindly note that we have instructions to receive correspondence and documents on behalf of!

Your Faithfully,



SHANTHI & CO

Enc