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Angela Hutchings
Chief Executive

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Friday, 6th January 2023 at 11:30
Venue:	Council Offices, Council Chamber
Membership:	Councillors Acott, Savage and Walter
Officers attending:	Jason Bishop – Corporate Legal Adviser 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

6 January 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

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

Date of conviction: 8 January 2016

Offence: Battery

Disposal: Fine £850 Compensation £150 Victim Surcharge £85

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

The application form is attached at Appendix 2.

2.2 The National Register of Taxi Licence Revocation and Refusals (NR3)

The NR3 Register contains information relating to any refusal to grant, or revocation of, a taxi or private hire driver's licence by any authority. This information is important in the context of a subsequent application to another authority for a drivers' licence by a person who has had their licence refused or revoked in the past. Castle Point Borough Council has signed up to use NR3. This means that when an application for a taxi drivers' licence is refused, or when an existing taxi or private hire driver's licence is revoked, that information will be placed upon the register.

As part of the application process the NR3 register was checked and two records by Transport for London relating to Applicant S were shown. A formal request has been made to that authority to release details of those entries.

When received this additional information will also need to be considered

- 2.3 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 S 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'

Guidance on assessment of previous convictions was contained within the Department for 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 DFT Assessment of Convictions is attached at Appendix 3.

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 offence he is not regarded as a fit and proper person to hold a Private Hire 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 by email on 8 December 2022. 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 - DFT Assessment of Convictions

Appendix 4 – 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)

Enhanced Certificate

Page 1 of 2

Disclosure &
Barring Service

DBS Fee Charged

Certificate Number

001805580691

Date of Issue:

04 NOVEMBER 2022

Applicant Personal Details

Surname:

Forename(s):

Other Names: NONE DECLARED

Date of Birth: 20 JUNE 1985

Place of Birth: KABUL AFGHANISTAN

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:

RETAIL EMPLOYEE

Alias Name(s):

NONE RECORDED

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

Date of Conviction:

04 JANUARY 2016

Offence:

BATTERY

ON 20 JULY 2015

CRIMINAL JUSTICE ACT 1988 S.39

Court:

NORTH WEST LONDON MAGISTRATES

Disposal:

FINE 850.00

COSTS 310.00

COMPENSATION 150.00

VICTIM SURCHARGE 85.00

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

NONE RECORDED

DBS Children's Barred List information

NONE RECORDED



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

Office use		
Date received	PHD number	
Name		
Address		
Date of birth	phone	email
Present occupation and employer PRIVATE HIRE - WATFORD		
Do you currently hold or have you previously held a licence with another authority? Yes <input checked="" type="checkbox"/> No <input 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 type="checkbox"/> - Please provide dates No <input checked="" type="checkbox"/>		
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"/> UNIVERSITY DEGREE <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
ABH 2013 Only pay Fine.			

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
	06.10.2022

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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 other weapon related offence	At least 7 years since completion 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

From: [REDACTED]
Sent: 08 December 2022 09:46
To: Licensing
Subject: Re: RE: Private hire license

Good Morning

I would like you to reconsider my application for private hire license as the conviction was only a minor showing on my CRB form it was only a court fine not a sentence therefore please I would be really grateful and appreciate your help if you can reconsider my application as I'm really financially struggling because of the pandemic covid family to support.

Sent from myMail for Android

Wednesday, 30 November 2022, 05:27pm +00:00 from Licensing Licensing@castlepoint.gov.uk:

Hello

Please find attached the Convictions policy of the recommended wait time for you conviction

We will have to refuse your application at this stage

Your options are to wait the full 10 years to apply *or* you can appeal this decision. However you will need to formally appeal, this process will take a few months to organise but we will then be able to arrange the hearing where you will need to explain to a panel of our councillors.

Kind Regards

Licensing and Safer Communities