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Ann Horgan
Proper Officer

AGENDA

Committee:	LICENSING SUB-COMMITTEE
Date and Time:	Wednesday, 23 June 2021 at 11:00 am
Venue:	Council Offices (via MS Teams)
Membership:	Councillors Acott, Egan and Palmer
Officers attending:	Mel Harris - Head of Licensing & Safer Communities Jason Bishop – Legal Adviser
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. The appeal is from a private hire driver applicant after their application was turned down because of entries on the DBS certificate – Applicant D**

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

- 4. Decision**

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PROCEDURE FOR HEARING

Held Virtually - Via MS Teams

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

Usually the Panel would withdraw at this point to consider its decision. This now takes place in concluding the meeting.

7. Conclusion

The Chairman will close the proceedings. The Panel will now consider its decision. During this time the Clerk will record the Panel's decision. The Committee may request the presence of the Legal Advisor to give them legal advice.

8. Decision

The Licensing Team will notify of the Committees decision after the meeting has closed.

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LICENSING SUB COMMITTEE

23 June 2021

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 for a Private Hire Driver's Licence in April 2021. The Council refused to progress the application on receipt of his Disclosure and Barring Service (DBS) certificate because Applicant D has the following convictions:

Date of conviction: 20 June 2017

Offence: Theft

Disposal: Fine £320 Costs £250 Victim Surcharge £32

Date of Conviction: 13 October 2008

Offence: Assisting another to retain or control benefit of criminal conduct

Disposal: 15 months Imprisonment

A copy of the DBS certificate 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'

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 D has been convicted of the above offences 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 D submitted a written appeal against this decision to the Council on 17 May 2021. 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 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
Appendix 3 - DFT Assessment of 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 \(www.gov.uk\)](http://www.gov.uk)

Enhanced Certificate

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Disclosure &
Barring Service

DBS Fee Charged

Certificate Number

Date of Issue:

15 FEBRUARY 2021

Applicant Personal Details

Employment Details

Surname:

Position applied for

Forename(s):

OTHER WORKFORCE

Other Names:

NONE DECLARED

Date of Birth:

05 JUNE 1983

Place of Birth:

LONDON

Gender:

MALE

Name of Employer:

TPH PRIVATE HIRE DRIVER - NEW

Countersignatory Details

Registered Person/Body:

Countersignatory:

Police Records of Convictions, Cautions, Reprimands and Warnings

Surname:

Last known occupation:

Forename(s):

UNEMPLOYED

Gender:

MALE

Birth Details:

Alias Name(s):

NONE RECORDED

Alias Date of Birth:

NONE RECORDED

Conviction Details

Conviction:

Date of Conviction:

13 OCTOBER 2008

Court:

DERBY CROWN

D

Offence:

ASSISTING ANOTHER TO RETAIN OR
CONTROL BENEFIT OF CRIMINAL
CONDUCT

Disposal:

VARIED ON APPEAL - SENTENCE NOW 15 MONTHS
IMPRISONMENT

ON 01 JANUARY 2006

CRIMINAL JUSTICE ACT 1988 S.93A(1)(A)

Conviction:

Date of Conviction:

23 JUNE 2017

Court:

NORTH NORTHUMBRIA MAGISTRATES

Offence:

THEFT

ON 19 MAY 2017

THEFT ACT 1968 S.1

Disposal:

FINE 320.00
COSTS 250.00
VICTIM SURCHARGE 32.00

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

NONE RECORDED



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

Date received 16/4/21	PHD number
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Name and address of applicant

Name [REDACTED]		
Address [REDACTED]		
Age and DOB [REDACTED]	phone [REDACTED]	email [REDACTED] mail.com

Present occupation and employer Driver - Self Employment
Do you currently hold or have you previously held a licence with another authority? N/A
Have you ever been refused a licence or had a licence revoked or suspended? N/A
How long have you held a full licence to drive a motor vehicle?

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

* CRB ATTACHED

Offence	Court	Date	Fixed penalty

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 [Signature]	Date 12.4.21
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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

<p>Dishonesty</p> <p>Conviction for any offence where dishonesty is an element of the offence</p>	<p>At least 7 years since completion of sentence imposed</p>
<p>Drugs</p> <p>Conviction for, or related to, the supply of drugs, or possession with intent to supply or connected with possession with intent to supply</p> <p>Conviction for possession of drugs, or related to the possession of drugs</p>	<p>At least 10 years since completion of sentence imposed</p> <p>At least 5 years since completion of sentence imposed</p> <p>An applicant may also have to undergo drugs testing for a period at their own expense to demonstrate they are not using controlled drugs</p>
<p>Discrimination</p> <p>Conviction involving or connected with discrimination in any form</p>	<p>At least 7 years since completion of sentence imposed</p>
<p>Motoring Convictions</p> <p>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</p> <p>Applicants with multiple motoring convictions</p>	<p>May indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally</p>
<p>Drink driving / driving under the influence of drugs</p> <p>Conviction for drink driving</p> <p>Conviction for driving under the influence of drugs</p>	<p>At least 7 years since completion of sentence imposed</p> <p>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</p>

	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

14th May 2021

Dear Melanie Harris

I am writing to you regarding the letter that I received on 21st April 2021.

In your letter you stated that my application had been rejected due to my previous convictions and I would like to appeal this.

For the past 3 years I have worked as a film unit driver, driving minibuses for large productions such as Wonder woman, Eternals, Witches, Matilda, Kingsman and many more. Within my role it is my duty to manage the other minibuses on site due to my expertise and reliability.

I understand that my application was refused due to my previous convictions. My latest conviction which was in 2017 was a miscommunication on a stag weekend, which led to me being convicted for something that was merely a big misunderstanding. At the time I did not have the means to cover solicitors' fees and travel back and forth to Newcastle to fight this case, so did not take it any further.

My latest conviction was over 4 years ago, and I have since then completely turned my life around. I have a proven working history of driving and dealing with high profile people and I feel that the decision that has been made was very harsh.

As stated above I have been working as a minibus driver for the past 3 years and wanted to gain my PCO licence to allow me to further my career. Rejecting my application would be detrimental to my work and family life. I have 4 children who I provide for, and the PCO licence would allow me to take on more opportunities to allow me to support them financially.

I would appreciate it if you could overturn the original decision that was made.

I have also attached a supporting letter from Mr Dean Thomas who is the Head of Transport for multiple production companies across the world.

I await your response.

Kind regards

A handwritten signature in black ink, appearing to be 'D. Thomas', written over the 'Kind regards' text.