

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 13 NOVEMBER 2014**

Present: Councillor D Perry (Chairman)
Councillors J Davey, J Loughlin and J Salmon.

Officers in attendance: M Chamberlain (Enforcement Officer), J Jones (Licensing Officer), M Perry (Assistant Chief Executive – Legal) and A Rees (Democratic and Electoral Services Officer).

Others in attendance: the applicants and supporters in relation to items 4, 5 and 6.

LIC41 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC42 EXCLUSION OF THE PUBLIC

RESOLVED that under section 100I of the Local Government Act 1972, the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

**LIC43 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE (ITEM 4)**

The Enforcement Officer said the applicant had applied for a private hire/hackney carriage driver's licence on 1 September. On the application form the applicant was asked to list any convictions, both spent and unspent. The applicant disclosed a conviction for one offence. He was disqualified from driving for 12 months in 1979 after he was convicted of drink driving.

As part of the application process the Council requested an enhanced DBS check. This showed a conviction on 21 September 1989 for possessing a controlled drug and handling stolen goods, as well as a further conviction for five further offences on 8 April 1992. Four of these were for possession of a controlled drug and the other for obtaining property by deception.

The Enforcement Officer said making a false statement was an offence under Section 57(3) Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000. The applicant should have been aware that the DBS check would highlight the spent convictions. The Assistant Chief Executive – Legal believed it was in the public interest for the Council to pursue a prosecution for the offence of making a false statement to obtain

a licence. The applicant did not meet the Council's licensing standards as he had a pending prosecution.

The applicant attended an interview under caution at the Council Offices on 21 October. He explained the two convictions in 1989 were for possession of cannabis and for handling stolen goods. One of the offences relating to the conviction in 1992 was for possession of cannabis and cocaine, but he had said he did not know what the other four drug related offences related to. The applicant said the offence for obtaining property by deception was probably related to benefit fraud when he claimed he was unemployed even though he was working. He had not disclosed these convictions on the application because he did not realise they had to be listed and did not want to jeopardise his job offer. On applications for other jobs, failure to disclose these convictions had not proven to be an issue. The convictions had come at a low point in his life, but he now had a stable lifestyle, as well as a clean driving licence.

In response to questions by members, the applicant said he was not aware of the significance of revealing all his previous convictions on the application form. He said he did not feel that the convictions which were not disclosed demonstrated that he would pose a threat to the public.

The Assistant Chief Executive – Legal said that a local authority conviction relating to housing benefit fraud would not have appeared on an enhanced DBS check. Therefore the conviction for obtaining property by deception was for a separate offence which the applicant had not disclosed.

The Assistant Chief Executive-Legal said the applicant's previous convictions were not a reason for refusal and if all of his convictions had been disclosed, the licence would have been granted under delegated powers. The application had been brought before the Committee because the applicant had a pending prosecution for dishonesty due to his failure to disclose all of his previous convictions on his application form.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 2.25pm so the Committee could consider its decision. They returned at 2.35pm.

DECISION

The applicant has applied to the council for the grant of a joint private hire/hackney carriage licence. On the application form for such a licence there is a question which requests applicants to list all convictions (including motoring convictions) both spent and unspent and any police cautions. The applicant answered this question by declaring that in or about 1979 he had received a one year ban for a drink-driving offence. No other offences were disclosed.

As part of the licensing process the council obtained an enhanced DBS check. This showed a conviction in 1989 for offences of possession of a controlled drug and handling stolen goods. The applicant was fined a total

of £150 and ordered to pay £35 costs. There were further five offences in April 1992. Four of these offences were for possession of a controlled drug, the other was for obtaining property by deception. He was ordered to a total of 120 hours community service, to pay costs of £25 and there was and order the drugs be confiscated. These convictions were all spent but s.7(3) Rehabilitation of Offenders Act 1974 permits the convictions to be considered by the council in considering an application for a licence.

Making a false statement to obtain a licence is an offence under s.57(3) Local Government (Miscellaneous Provisions) Act 1976. The Assistant Chief Executive – Legal has determined that it is in the public interest to prosecute for this offence. Whilst the convictions themselves would not prevent the licence being granted to the applicant he does not meet the council's licensing standards because he is facing a prosecution for the offence under s.57(3) of the 1976 Act.

When interviewed under caution at the council offices the applicant explained that the drug offences were in relation to drugs for personal use. He was unclear about the offence of obtaining property by deception but felt it may have been connected with a benefit fraud as he was working and claiming to be unemployed. He stated that he did not disclose these convictions as he did not realise it had to be listed and he did not want to jeopardise his job offer having left his previous employment. He said he had not disclosed the convictions on other application forms in the past and that this had not caused any problems. The applicant said that he had not disclosed these offences although he thought they might show on his DBS check.

Had the applicant disclosed the convictions on his application form a licence would have been granted. However, making a false statement to obtain a licence is an offence of dishonesty. It is a fundamental principle that drivers of hackney carriages and private hire vehicles should be honest. Drivers are in a position where they can obtain sensitive information about customers' whereabouts and also where they are able to take financial advantage of their customers.

The council may only grant a driver's licence when it is satisfied that the applicant is a fit and proper person to hold such a licence. Because of the applicants' dishonesty in completing the application form the committee is not so satisfied in the applicants' case and the licence will therefore be refused.

LIC44

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE (ITEM 5)

The Licensing Officer said the applicant had applied for a private hire/hackney carriage driver's licence on 22 September. On the application form the applicant was asked to list any convictions, both spent and unspent. The applicant had disclosed two motoring offences in 2013, for which he was endorsed with three points on his licence for each offence. He

had also disclosed four convictions, but could not recall the offence for handling stolen goods in 1981. The applicant stated he would make enquiries about the offence to the DBS.

As part of the application process the Council requested an enhanced DBS check for each applicant. The DBS certificate showed the four following offences: making off without paying on 7 December 1979, handling stolen goods on 22 December 1981, burglary and theft (non-dwelling) on 17 December 1991 and obstructing the police on 9 January 1992. The applicant was sentenced to imprisonment for three months wholly suspended for two years for the offence in 1981.

The Licensing Officer said that although all the offences were spent under the Rehabilitation of Offenders Act 1974, the Council's Licensing Standards stated that an applicant must have no convictions for offences of dishonesty, indecency or violence for which a custodial sentence, including a suspended sentence, was imposed.

The applicant had attended the Council Offices on 16 October to discuss his application. He had stated that he did not recall the conviction for handling stolen goods and was disputing the information on the DBS certificate. He had produced a letter from the DBS which stated they were aware of the dispute and had contacted the Police, who they would await instructions from before contacting the applicant again. The Licensing Officer said that given the length of time that had elapsed since the offence, it had been deemed appropriate to refer the case to the Committee.

In response to questions by members the applicant said he felt he should be granted a licence as he had received no convictions since 1992 and the sentence he received was suspended wholly for two years. His wife was currently working two jobs and he wanted to work as a private hire driver in order to reduce the burden on her.

The Assistant Chief Executive – Legal said that although the Council's policy stated that applicants should not be granted licences if they had convictions relating to dishonesty, given the time that had passed since the applicant's last conviction, members may consider it appropriate to depart from policy.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 2.50pm so the Committee could consider its decision. They returned at 2.55pm.

DECISION

Councillor Perry said the Committee found the applicant to be a fit and proper person to hold a private hire/hackney carriage driver's licence.

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE (ITEM 6)

The Licensing Officer said the applicant had applied for a private hire/hackney carriage driver's licence on 8 October. On the application form applicants were asked to list any convictions, both spent and unspent. The applicant had disclosed three offences of assault which had occurred in 1980's and 1990's but had not given precise dates.

The Licensing Officer said the Council was required to obtain an enhanced DBS certificate for each applicant. The applicant's certificate showed the following four convictions: wounding on 22 December 1980, assault occasioning actual bodily harm on 4 March 1983, assault occasioning actual bodily harm on 8 March 1989 and intent to do grievous bodily harm on 20 January 1995. For the second offence he had received a sentence of three months imprisonment, wholly suspended for two years. For the fourth offence he received a sentence of 21 months imprisonment.

The Licensing Officer said that although all the offences were spent under the Rehabilitation of Offenders Act 1974, the Council's Licensing Standards stated that an applicant must have no convictions for offences of dishonesty, indecency or violence for which a custodial sentence, including a suspended sentence, was imposed.

The applicant had attended a meeting at the Council Offices on 17 October to discuss his application, as well as his convictions. The applicant had explained the circumstances surrounding his convictions and said he regretted what he had done. Since 1995 the applicant had received no convictions.

In response to questions by members the applicant said the offences occurred when he was younger. He had a well-paid job and spent a lot of his money on alcohol. Two weeks prior to the offence in 1995 for Wounding with Intent to do Grievous Bodily Harm, he had found out his father had cancer, was in the process of splitting up with his then partner and was on medication for depression.

The applicant said the anger management courses he had undertaken whilst in prison had worked and there had not been any need for him to continue taking the courses after his release from prison.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 3.15pm so the Committee could consider its decision. They returned at 3.20pm.

DECISION

Councillor Perry said the Committee found the applicant to be a fit and proper person to hold a private hire/hackney carriage driver's licence.

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE (ITEM 3)

The Enforcement Officer said the applicant had e-mailed to say he would not be attending the meeting and had requested that the matter was dealt with in his absence.

The Enforcement Officer said the applicant had applied for a private hire/hackney carriage driver's licence on 19 May. On the application form the applicant had been asked to list all convictions, both spent and unspent. The applicant had disclosed one offence, a DR10 (driving or attempting to drive with an alcohol level above the legal limit), for which he had received a £75 fine.

As part of the application process, the Council requested that an enhanced Disclosure and Barring Service (DBS) check should be obtained for each applicant. The applicant's DBS check showed a conviction on 26 May for drink driving, for which he was fined £75, ordered to pay of £43 and disqualified from driving for 12 months. The DBS check also showed convictions for two separate offences of driving with no insurance and driving whilst disqualified. He had been ordered to do a community order of 150 hours unpaid work and pay costs of £138.

The Enforcement Officer said making a false statement was an offence under Section 57(3) Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000. The applicant should have been aware that the DBS check would highlight the spent convictions. The Assistant Chief Executive – Legal believed it was in the public interest for the Council to pursue a prosecution for the offence of making a false statement to obtain a licence. The applicant did not meet the Council's licensing standards as he had a pending prosecution.

On 26 September, the applicant attended an Interview Under Caution at the Council Offices. The applicant had confirmed that he had completed the application form without any help. He did not know why he did not disclose all his convictions but said he had understood the question on the application form. He only disclosed the one conviction as it was the only conviction on his DVLA counterpart licence.

DECISION

The Chairman read out the decision of the committee as follows:

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. For reasons which I will turn to later the applicant does not meet the council's licensing standards and the matter has therefore been referred to the committee for determination. The applicant has been notified of the time and date of the committee meeting. He has emailed the council stating that he cannot attend and requested that the matter be dealt with in his absence. The committee has decided to proceed accordingly.

When applying for his licence, the applicant completed the standard application form which asks applicants to list all convictions (including any motoring offences) both spent and unspent and any police cautions. The applicant replied declaring a drink-drive offence in 2005 for which he received a £75 fine and was disqualified for 12 months. The applicant did not disclose any other offences.

As part of the licensing process the council requested an enhanced DBS check for the applicant. This revealed the conviction disclosed by the applicant in his application form. However, the form also showed two further convictions in July 2005 for two offences of having no insurance and driving whilst disqualified. The applicants' licence was endorsed and he was ordered to do a community service order of 150 hours unpaid work and ordered to pay £138 costs. These convictions are now spent but s.7(3) Rehabilitation of Offenders Act 1974 permits spent convictions to be admitted when the council is considering applications for drivers' licences.

It appears therefore that the applicant has made a false statement to obtain a licence which is an offence under s.57(3) Local Government (Miscellaneous Provisions) Act 1976. The applicant was interviewed at the council offices with regard to this offence. In the interview, the applicant acknowledged that he was aware of the conviction. He said that he did not disclose the conviction on the application for the licence because he considers it unimportant because it was a long time ago. He said that he only disclosed the convictions which were revealed by his counterpart licence. The Assistant Chief Executive – Legal has decided it is in the public interest to prosecute for the offence of making a false statement to obtain a licence. Proceedings have now been issued and the case has been listed for hearing. Because of the pending prosecution the applicant does not meet the council's licensing standards.

The committee take a view that the applicant took a conscious decision not to disclose the conviction for driving whilst disqualified and driving without insurance because it was not on his counterpart licence and he did not think the council would find out about them. Whilst the convictions themselves would not have prevented the applicant being granted a licence, the committee regard a failure to answer the questions on the application form honestly as being dishonest. It is a fundamental principle that drivers of hackney carriages and private hire vehicles should be honest. Drivers are in a position where they can obtain sensitive information about customers' whereabouts and also where they are able to take financial advantage of their customers.

The council may only grant a driver's licence when it is satisfied that the applicant is a fit and proper person to hold such a licence. Because of the applicants' dishonesty in completing the application form the committee is not so satisfied in the applicants' case and the licence will therefore be refused.

RESOLVED that the public would no longer be excluded from the meeting under section 100I of the Local Government Act 1972.

DETERMINATION OF A PRIVATE HIRE OPERATORS LICENCE – SHFT LTD

The Enforcement Officer said SHFT was a licensed private hire company, first granted a private hire operator's licence on 16 June 2014. The company had registered with Companies House and had become active on 4 June 2014. Jodie Hamby was listed as the sole director of the company. SHFT had no licensed vehicles and four licensed drivers, Miss Hamby and three others.

During July 2014, the Council had attempted to contact Mrs Hamby as it had not received all the required documentation or fee, to register a silver Ford Transit as well as a white Vauxhall Astra. These documents and fees had still not been received by the Council.

The Enforcement Officer said that two Enforcement Officers visited the operator's address on 30 June 2014, which was a mechanics garage. The garage's manager had said Miss Hamby she was not there. There were no licensed vehicles so it did not appear that the operator was based there.

On 6 August, two Enforcement Officers visited the operating address of SHFT Ltd to inspect the record of private hire bookings. Following a conversation with a lady who worked in the office who said that Miss Hamby had left for the day, the lady took the officer's contact details to forward to Miss Hamby. However, no communication was ever received from Miss Hamby.

On 26 September, the Enforcement Officer had written to Miss Hamby to request that she provided all records of private hire bookings for SHFT Ltd, since 16 June 2014, within seven days. No response had been received. As the company had failed to provide any documents when requested to do so by an authorised officer, it did not appear that the company was trading, or had any intention of trading.

DECISION

SHFT Ltd was licensed by the council as a private operator on the 16 June 2014. The company is registered at Companies House with a sole director. Although it has been licensed for over 5 months there are no vehicles licensed by the operator. Applications have been received for two vehicles and vehicle test sheets supplied but the necessary documentation and the fees have not been provided. The Licensing Team have made numerous efforts to contact the operator but without success. On two occasions enforcement officers have visited the operating address given by the company. On both occasions there was no sign of any physical presence by the company at the premises.

On the 26 September 2014 an enforcement officer wrote to the company at the operating address requesting production of records relating to bookings

from the grant of the licence. No reply has been received. The enforcement officer prepared a report for consideration by the committee this afternoon. The company was sent a copy of the report and invited to attend the committee meeting to satisfy members that it remained a fit and proper person to hold an operator's licence. No response was received and the company failed to send a representative this afternoon.

It is essential that operators co-operate closely with the council. Because of the lack of co-operation by SHFT Ltd members are not satisfied that company remains a fit and proper person to hold an operator's licence and the licence is therefore revoked under s.62(2)(d) of the Local Government (Miscellaneous Provisions) Act 1976 for any other reasonable cause.

The meeting ended at 4.15pm.