

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 18 JUNE 2015**

Present: Councillor R Chambers (Chairman)
Councillors G Barker, J Davey and S Morris.

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 present: The applicants in relation to Items 3 and 4.

LIC4 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence and declarations of interest.

The Committee agreed to move to Item 4, followed by Item 3 and then Item 2.

LIC5 **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.

LIC6 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S
LICENCE – ITEM 4**

The Licensing Officer presented her report. She explained the applicant had applied for a private hire/hackney carriage driver's licence on 5 March 2015. Applicants were asked to disclose all convictions, both spent and unspent, as well as any police cautions. The applicant disclosed two offences of assault, one in 2000 and one in 2002. He received a six month probation order for the first offence and a three month prison sentence for the second. Applicants were, as part of their application, required to undergo an enhanced DBS check. The applicant's DBS check revealed these two convictions.

The Licensing Officer said the applicant did not currently meet the Council's Licensing Standards, as although all his convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, the Council's Standards said a driver must not have any criminal convictions for an offence of violence of which a custodial sentence was imposed.

On 8 May 2015, the applicant attended the Council Offices to discuss his application. The applicant said he and his wife lived with his mother-in-law until late 2000, who he felt was interfering in his marriage. On 9 December 2000 he had an argument with his mother-in-law and pushed her. He then left the house and upon

his return was told the police had been contacted about the incident. He attended the police station the next day and was charged with common assault.

The Licensing Officer said that on 4 August 2002 the applicant and his wife had an argument, so he went to the pub with a friend. Although he did not normally drink, he was upset and got drunk because of this. When he got home he continued the argument with his wife. His wife began to throw things at him, so he responded and then pushed his wife, who hit her head on a wardrobe. The applicant was arrested and told he could not see his wife until the trial. He was sentenced to three month's imprisonment and spent three weeks in an open prison before being released with a tag. He moved back in with his wife and had a second daughter in 2006, however they split up in 2008 and divorced in 2010. They have joint residence of both daughters and now have an amicable relationship. He had worked for the same company for 15 years who had kept his job open whilst he was in prison.

Councillor Chambers invited the applicant to speak. The applicant said he had made two mistakes which had led to his convictions for assault. He had no convictions since 2003 and therefore felt he should be granted a licence.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 2.10pm so the Committee could consider its decision. They returned at 2.20pm.

DECISION

The applicant has applied to the Council for a joint private hire/hackney carriage driver's licence. One of the questions on the application form asks applicants to declare all convictions spent and unspent. In response to this the applicant gave details of an offence of assault in 2000 for which he was given a probation order and a similar conviction in 2002 for which he received a 3 month prison sentence. These convictions were confirmed by the enhanced DBS check carried out by the Council as part of the application process. The convictions are now spent by virtue of the provisions of the Rehabilitation of Offenders Act 1974 as amended.

Under the Local Government (Miscellaneous Provisions) Act 1976 councils have a duty to grant licences upon application to applicants who hold a current driving licence and who have done so for at least 12 months. However the Act goes on to say that a council shall not grant a licence unless it is satisfied that the applicant is a fit and proper person. The Council has a licensing policy which contains licensing standards. These are not binding on members but are a guide as to who may be considered fit and proper persons. Paragraph 2.3 of the policy states that "applicants who do not meet all the licensing standards will only be granted a licence if there are good grounds for departing from the Council policy. The burden of proof is upon the applicant to satisfy the Council that he or she is a fit and proper person". Paragraph 2.4 of the policy says that "There may be reasons why an applicant may be considered not to be a fit and proper person even though he or she meets licensing standards. Conversely there will be cases where someone does not meet licensing standards but nevertheless the Council is satisfied that he or she is a fit and proper person so that a licence can be issued. Each case is decided upon its merits."

The licensing standards for drivers provide that applicants should have no criminal convictions for an offence of violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed. Assault is an offence of violence and as the applicant was sentenced to a term of imprisonment for such an offence he does not meet the licensing standards. It is for him to satisfy the Committee that he is a fit and proper person and that there are therefore good grounds to depart from the Council's policy and grant a licence in his case.

The applicant was interviewed by the licensing officer who prepared the report for committee. He told her the circumstances of the offences which are recorded at paragraph 5 of her report. He agrees that that account is accurate today.

The Committee notes that the conviction for which the applicant was given a custodial sentence was for common assault and not the more serious offences of assault occasioning actual bodily harm or grievous bodily harm. The Committee also note that the relevant conviction is now over 12 years old and that the applicant has committed no offences of any nature since that conviction. Finally the Committee notes that the assaults were in the nature of domestic violence arising from family arguments. While this in no way lessens the severity of the offences in terms of risk the Committee considers that the convictions do not indicate that the applicant may use violence towards members of the public.

In the circumstances the Committee is satisfied that the applicant is a fit and proper person, that there are grounds to depart from the Council's policy and the Committee grants him a driver's licence.

LIC7

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE – ITEM 3

The Enforcement Officer presented his report. The applicant had applied for a licence on 4 March 2015. The application form asked applicants to list all convictions, both spent and unspent along with any police cautions. The applicant declared an offence for speeding in 2011, an offence of drink driving in 1992 and a conviction for a domestic in 2009. His licence was endorsed with three penalty points on his licence, disqualified from driving for 12 months and fine £50 along with a being given 180 hours of community service for the three offences respectively.

Applicants were required to undergo an enhanced DBS check. This revealed a conviction on 8 April 2010 for three offences; one for pursuing a course of conduct which amounted to harassment and two counts of battery. He was ordered to complete 180 hours of community service, pay £50 compensation and £300 costs.

The Enforcement Officer said the applicant had initially applied for a private hire driver's licence in 1995, which was refused due to the short time which had elapsed following his conviction for drink driving. The application form asked 'have you ever been refused or had revoked or suspended a hackney carriage or private hire drivers licence.' The applicant answered this by stating 'No'. Following the

initial refusal of his application, the applicant had subsequently applied successfully for a licence, however making a false statement was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

The applicant attended an Interview Under Caution on 15 April 2015. At the interview, the applicant said he did not disclose that his licence had been refused as he thought he only had to disclose any refusals or revocations within the last five years. He had left his job as a chauffeur for Tesco due to redundancy. When questioned about the offences on his DBS check the applicant said his ex-wife and her partner had attacked him. He reacted in self-offence but used too much force.

The Enforcement Officer said the applicant was aware an enhanced DBS check was being carried out and should have realised the convictions would come to the Council's attention. The Assistant Chief Executive – Legal had not felt it was necessary to seek a prosecution in this instance, but did issue a formal caution for the offence of making a false statement in order to obtain a licence. The applicant does currently meet the Council's licensing standards, however the Assistant Chief Executive – Legal had declined to grant the licence under delegated powers in light of the false statement.

The applicant, in response to a question by Councillor Barker, explained he had been employed by Tesco as an executive chauffeur for 15 years before being made redundant. The Chairman then invited the applicant to speak further about his application. The applicant said he wanted the job to provide for his daughter. In addition to his work for Tesco, he had been a volunteer at Stansted Social Club for the last two years.

The Assistant Chief Executive – Legal explained that the personal circumstances of the applicant were not relevant in determining whether they were a fit and proper person to hold a licence.

The Assistant Chief Executive – Legal asked the applicant to explain why he had indicated on his application form that he had never been refused a private hire licence, when the Council's Licensing Committee had refused his application for a licence in 1995. The Assistant Chief Executive – Legal drew attention to the applicant's application form. He said the wording of the question was clear and the applicant ought to have disclosed the refusal. Additionally, the applicant had answered the question which asked him disclose "all convictions" correctly. It was not apparent how the applicant had determined that the question only applied to the previous five years.

The applicant said he had not disclosed the refusal as his subsequent application for a licence had been approved. Due to this, he hadn't considered the refusal to be relevant to his new application.

The applicant and the Enforcement Officer left the room at 2.35pm so the Committee could consider its decision. They returned at 3.05pm.

DECISION

The applicant has applied to the Council for a joint private hire/hackney carriage driver's licence. One of the questions on the application form asks applicants to

disclose all convictions both spent and unspent. In response to that question the applicant declared a drink drive offence in 1992, a conviction at Harlow court on 19 September 2009 for a domestic offence for which he was fined £50 and given 180 hours community service and a speeding offence in 2011.

As part of the application process the Council undertakes an enhanced DBS check. This revealed convictions for 3 offences namely an offence of harassment on 1 February 2009 and 2 for battery on 20 September 2009. The date of conviction for all offences was 8 April 2010 and the applicant was ordered to pay a total of £100 compensation, costs of £300 and to undertake unpaid work in the community for 180 hours. This is not entirely consistent with the information given by the applicant on the application form which appears to relate to the 2 battery charges only and not the conviction for harassment. However all of these offences are spent under the Rehabilitation of Offenders Act 1974 as amended.

A further question on the form asks whether the applicant has ever been refused a hackney carriage or private hire driver's licence. In response to that question the applicant answered "No". That answer was incorrect. In 1995 the applicant applied to this Council for a driver's licence. The now Licensing Team Leader was present at the committee meeting which determined the application and remembers that it was refused due to the serious nature of the drink drive conviction and the short period of time that had elapsed between that conviction and the application. Making a false statement to obtain a licence is an offence under the Local Government (Miscellaneous Provisions) Act 1976 punishable by a fine of up to £1000. However in this case the Assistant Chief Executive – Legal decided that a prosecution was not necessary in the public interest and the applicant was offered a formal caution as an alternative which he accepted. The caution is spent by virtue of the Rehabilitation of Offenders Act.

The applicant does meet the council's licensing standards as although cautions within the last 12 months would normally be outside standards this does not apply to cautions administered by the Council. However making a false statement to obtain a licence is an offence of dishonesty and the Assistant Chief Executive – Legal has declined to issue a licence under delegated powers deferring the decision for members.

Despite the apparent discrepancy between the application form and the enhanced DBS check members do not believe that the applicant was deliberately trying to mislead in this respect. The 3 offences were clearly dealt with at the same time. When interviewed under caution by the enforcement officer he explained that the offences arose in the context of a dispute with his ex-wife and her partner. On the balance of probabilities the Committee is satisfied that the applicant declared as much as he remembered about the convictions on the application form.

The explanation as to why he was not truthful about the previous refusal of his licence is less convincing. In interview under caution he said that he believed the question only related to the last 5 years. The Committee cannot understand how the applicant can have come to that conclusion. The question on the form is clear "Have you ever been refused a hackney carriage or private hire driver's

licence?" There is nothing in the form which could possibly suggest that this question was in any way time limited. Further the Committee notes that the applicant did not display similar confusion when responding to the question asking for details of "all convictions". However the applicant also says that he considered that he did not need to disclose the refusal as since his application was refused in 1995 he had been granted a licence by this Council and had held it for a number of years. The Committee can understand that position. The Committee further notes that had the refusal been disclosed it would not have been relevant to his application and the licence would have been granted.

In the circumstances the Committee is satisfied that the applicant is a fit and proper person and his licence will be granted.

LIC8

DETERMINATION OF A PRIVATE HIRE DRIVER'S LICENCE – ITEM 2

The Assistant Chief Executive – Legal said that nothing had been heard from the applicant and he had not asked for the hearing to be deferred. In the circumstances the Committee decided to determine the case in the applicant's absence.

The Assistant Chief Executive – Legal said that the applicant had applied for a private hire/hackney carriage driver's licence on 1 April 2015. On the application form he disclosed he had a conviction for trading standards matters where he was given a six month suspended sentence and was ordered to pay £15,000 in costs.

Applicants were required to undergo enhanced DBS checks as part of the application process. The applicant's check revealed that in November 2012 he was convicted of one offence under General Food Regulations 2004, three offences under the Food Hygiene (England) Regulations 2006, five offences of selling food the preparation of which was likely to mislead as to its nature, substance or quality under the Food Safety Act 1990 and one offence of possessing for sale food the presentation of which is likely to mislead as to nature, substance or quality under the Food Safety Act 1990. He received a six month suspended prison sentence and was disqualified from being a company director for four years. These offences were categorised as food fraud which is an offence of dishonesty. As the applicant had received a custodial sentence for an offence of dishonesty he did not meet licensing standards. In the circumstances it was for him to satisfy the Committee that he was a fit and proper person and that there were grounds to justify a departure from policy. The burden of proof was on the applicant.

DECISION

The applicant has applied to the Council for a joint private hire/ hackney carriage driver's licence. The application is before the Committee for consideration today. The applicant is not present. He has not made contact with the Council to explain his absence or to request a deferment. In the circumstances members resolved to proceed to consider the application in his absence.

On his application form the applicant disclosed that he had a conviction from Nottingham Court for trading standards matters for which he was given a 6 month suspended sentence and ordered to pay £15,000 costs. As part of the application process the Council undertakes an enhanced DBS check. This revealed that the applicant was convicted by Nottingham Crown Court on 14 November for 1 offence under the General Food Regulations 2004, 3 offences under the Food Hygiene Regulations 2006, 5 offences under the Food Safety Act 1990 of selling food the preparation of which was likely to mislead as to its nature, substance or quality and 1 offence of possessing for sale food the preparation of which was likely to mislead as to its nature, substance or quality. In respect of all of these offences the applicant pleaded guilty. He was sentenced to 6 months imprisonment on each count concurrent suspended for 2 years. He was also made the subject of a supervision requirement for 6 months and in respect of the first offence he was disqualified from being a company director for 4 years. The applicant appealed against sentence but the sentences were all upheld by the Court of Appeal.

The licensing standards for drivers provide that applicants should have no criminal convictions for an offence of dishonesty in respect of which a custodial sentence (including a suspended custodial sentence) was imposed. The offences of which the applicant was convicted are classified as food fraud. Fraud is clearly an offence of dishonesty and the applicant does not meet the Council's licensing standards. It is for him to satisfy the Committee that he is a fit and proper person and that there are therefore good grounds to depart from the Council's policy and grant a licence in his case.

The applicant has not attended today and has not advanced any case why the Committee should depart from its policy. In the circumstances the Committee cannot be satisfied that he is a fit and proper person and the application for a licence is refused.

The meeting ended at 3.15pm.