EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 9 JULY 2015

Present: Councillor R Chambers (Chairman)
Councillor J Davey, E Hicks and S Morris.

Officers in attendance: M Perry (Assistant Chief Executive – Legal) and A Rees (Democratic and Electoral Services Officer).

Also present: The applicant in relation to Item 2.

LIC9 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

No apologies for absence or declarations of interest were received.

LIC10 **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.

LIC11 **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Assistant Chief Executive – Legal presented his report to the Committee. He said the applicant had applied for a private hire/hackney carriage driver's licence on 1 April 2015. On the application form he disclosed 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 are 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 was an offence of dishonesty. As the applicant had received a custodial sentence for an offence of dishonesty he did not meet licensing standards.

The applicant was initially interviewed by a licensing officer, where he explained he was prosecuted instead of the company as the company could go into liquidation and avoid punishment. He was asked to provide copies of various documents concerning the prosecution. He complied in part with this request, although he did not supply several documents which would have been of use such as the indictment.

The Assistant Chief Executive – Legal interviewed the applicant on 19 May, where the applicant said he felt he had been unfairly treated by the court. The applicant then outlined the nature of his operation. The Company bought surplus products from food manufacturers, who supplied large supermarkets with “own brand” produce. Supermarkets did not always purchase the amount they had initially indicated, leaving a surplus of stock. Own brand products could not be sold on the open market, so the applicant bought the surplus products at a discounted rate, re-labelled them and sold them on.

In 2004, the applicant’s Company had a contract with Llangadog Creamery which produced dairy products. Llangadog Creamery put a designated health mark onto all of its products. The applicant said that in 2004 health marks were incorporated into label, but it was now a requirement that it was included on the tin. Llangadog Creamery ceased trading in 2004, at which point the health mark was transferred to another company which ceased trading in 2006. The health mark had not been reallocated since.

In 2010 the applicant had acquired cans of evaporated milk from Holland with the health mark NLZ0345EEC. The applicant explained he had decided to use the artwork he already had for products bought from Llangadog Creamery, but forgot to remove the health mark on the label. This was nothing more than an oversight and he had not been in trouble with trading standards previously.

The Assistant Chief Executive - Legal said within the prosecution evidence of statements there were statements from persons who had inspected the premises. They had found a number of products which could be used to change the expiry dates on the cans. The applicant said he had altered the expiry dates, albeit using different products to the ones described in the statements, with the permission of the manufacturer and said it was legal to do this. The applicant had not produced any evidence he had permission from the manufacturer to change the expiry dates.

There was further evidence of mislabelling products by the applicant. This included the sale of Borlotti beans, which were sold as baked beans. With regard to this, the applicant said he had purchased the beans from Premier Foods in good faith. A number of cans had been checked, and all the checked cans contained baked beans so he had no reason to suspect the others didn’t.

The applicant had had previous dealings with Trading Standards. In 2006 they investigated a complaint that the applicant's company had not placed health marks on tinned mackerel. The evidence showed the applicant had been informed that he must have approval in order to re-wrap any products of animal origin. The applicant said his company had occasionally relabelled products of animal origin and replicated the health mark. Trading Standards informed him this was an offence unless he was given approval. Trading Standards had taken no further action and seemed to be satisfied the advice given to the applicant was sufficient.

The Assistant Chief Executive – Legal, in the interview on 19 May, asked the applicant to give his account of the prosecution. The Assistant Chief Executive – Legal said he found parts of the applicant's account surprising. At the Magistrates' Court stage the applicant would have been informed the offence was one which could be tried by the magistrates or before a jury at the Crown Court. He would have been given an option to indicate at that stage how he wished to plead. The applicant cannot recall whether he gave any indication of plea or not at that stage but said that at that point in time his intention was to plead not guilty. With offences which can be tried by the magistrates or by the Crown Court, the magistrates have to decide whether to accept jurisdiction. If they consider that their powers of sentence would not be sufficient they may refer the case to the Crown Court in any event. The applicant cannot recall whether he was asked to make any representations as to the place of trial. He also cannot recall whether he requested a jury trial or not. He does remember the matter being sent to the Crown Court.

The applicant had said there were three Crown Court Hearings. The first was adjourned as the applicant had just changed solicitor. The second was a case management conference and the third was a trial where the applicant pleaded guilty.

The Assistant Chief Executive – Legal said this course of events was very unusual. Ordinarily the first hearing would have been for plea and directions. A case management conference would then only take place if a not guilty plea had been made to ensure that matters were ready for trial. The applicant had also said he felt he ought to have pleaded not guilty, but pleaded guilty on legal advice. The applicant then complained about the quality of his legal representation as his advocate only spoke for 25 seconds before the judge passed his sentence, whilst the prosecution spoke for 52 minutes.

The Assistant Chief Executive – Legal did not find this account credible as a plea in mitigation within 25 seconds was not possible. If the offence was serious an experienced advocate may defer his plea in mitigation until the pre-sentence reports had been prepared. Given the nature of the offence, it was extremely unlikely the judge would have

imposed the sentence without the benefit of pre-sentence reports. However, the applicant maintained this was what happened.

The sentence seemed severe, however it was noted the applicant had appealed the decision. The appeal was unsuccessful so the Court of Appeal must have been satisfied the sentence was appropriate.

The applicant had initially taken the position that only he had been prosecuted and not his company, but in his interview with the Assistant Chief Executive - Legal eventually admitted both himself and the company had been prosecuted. Furthermore, on his application form the applicant had stated that he had not been fined, but had been ordered to pay £15,000 in costs. At the interview the applicant stated the company was fined £15,000. The DBS check did not reveal any cost order and it was not clear whether the applicant had either innocently or deliberately classified the fine awarded to the company as costs.

The Assistant Chief Executive – Legal said he had taken advice from the Council's Environmental Health Team. They had said all products of animal origin needed health marks unique to a company so the products were traceable. Only a person who does something to the product can place a health mark. The applicant's company did not do this, so they could not place health marks for that purpose. This was consistent with the advice given by Trading Standards to the applicant in 2006.

The Chairman invited the applicant to speak about his application. The applicant began by outlining how his Company operated. He explained the Company had a contract with Llangadog Creamery, which ceased when Llangadog Creamery was bought by Nestle. Subsequently the Company entered into a contract to sell dairy products bought from a company in Holland. He made a decision to use the label which was previously used on products from Llangadog Creamery but forgot to remove the health mark. In the time between the two contracts it had become a requirement that health marks were placed on the tin, whereas previously they were placed on the label. This meant the product had two different health marks.

When Trading Standards initially investigated him, they had suggested this was deliberate, but the applicant re-iterated to them it was just an oversight. The applicant then said he thought only the Company was going to be prosecuted, but had later been told he was also going to be prosecuted.

The applicant said his recollection of the trial was vague, but he did explain that he felt his actions had not been serious and that he intended to plead not-guilty. This may have been why the case was then referred to the Crown Court. He changed to a local solicitor in order to save costs and the new solicitor advised him to plead guilty.

The applicant explained that he did not feel he was guilty but did eventually plead guilty due to his solicitor's advice.

The applicant spoke about the quality of his legal representation and his experience of the trial. The prosecutor had spoken for 52 minutes but his advocate only spoke for a maximum of two minutes. He had found it frustrating that a number of things had been said about him which he felt were untrue and he could not reply to.

He had experienced no previous problems with Trading Standards prior to his conviction in 2012. He felt the issue with Trading Standards had occurred when his businesses' warehouse and retail departments were split between two separate authorities.

The applicant reiterated the issue was an oversight on his part and then explained that he currently worked in the management team of a taxi company. However, in the future his company could require him to occasionally drive minibuses as cover.

The Assistant Chief Executive – Legal outlined the conventional court procedures and asked the applicant whether he remembered anything relating to pre-sentence reports during the trial, as the applicant had been adamant during their interview that there had been no pre-sentence reports. In response the applicant said he remembered hearing the word "pre-sentence" but he was unsure what that meant at the time of his trial. He could not remember whether he had met with a probation officer during the pre-sentencing period.

The applicant in response to a further question by the Assistant Chief Executive – Legal, said he thought he had pleaded not-guilty when first asked to give plea and directions. The Assistant Chief Executive – Legal said this was consistent with a case management conference subsequently taking place. The applicant must have then changed his plea at the trial.

The applicant was questioned about his investigation by Trading Standards following a complaint his Company had sold tinned mackerel which was not health marked. The applicant said he did not feel the case was relevant as there had been no prosecution as a consequence. There were many companies who had dealt with the product prior to his Company and only his had been picked on. He had not committed an offence as the Company had made no alterations to the tins and had only acted as a middleman.

The Assistant Chief Executive – Legal drew attention to paragraph 17 of his report, where the applicant had admitted to Trading Standards that in the past the applicant's Company had rewrapped products of animal origin.

Councillor Hicks told the applicant that the purpose of the meeting was to determine whether he was a fit and proper person to hold a licence, not to re-evaluate his trial. Councillor Hicks then asked the applicant whether there was further information he could provide the Committee which would show he was a fit and proper person to hold a driver's licence.

In response the applicant said he had been working with his current employer for around four to five months in a management role. He was now a registered carer for his mother and spent a considerable about of time looking after her.

Councillor Chambers asked the applicant why he had not produced written confirmation from the manufacturer that the Company could change the expiry dates on cans. The applicant, in response, said his Company had so many letters of written confirmation it would have been difficult to find the letter of confirmation relating to this incident. In this case, as the products were originally from Holland, the applicant had not received permission from the manufacturer and had instead received permission from a specialist analyst. It was legal to do this and he had not been prosecuted on this matter.

Councillor Chambers questioned the applicant regarding his change of plea. The applicant said that although he firmly believed he should have pleaded not guilty, his solicitor had advised him that he had no defence. The applicant had felt obligated to take the advice of his solicitor into account and reluctantly changed his plea to guilty.

The Assistant Chief Executive – Legal said that although all the applicant's convictions were deemed spent in accordance with the Rehabilitation of Offenders Act 1974, the applicant did not meet the Council's Licensing Standards as he had a conviction for an offence of dishonesty for which a custodial sentence had been imposed. The Committee was not bound by the Council's Policy and could make exceptions where appropriate. The Policy set out four factors which the Committee should consider. These were; the nature of the offence, the severity of the offence, the length/severity of the offence and the passage of time since the conviction.

The applicant left the room at 11.20am so the Committee could consider its decision. He returned at 12.10pm.

DECISION

The applicant has applied to the Council for a joint private hire/ hackney carriage driver's licence. On his application form he 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.

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 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 good grounds to depart from the Council’s policy and grant a licence in his case.

As part of the application process the applicant was interviewed by a licensing officer. He was asked to provide copies of certain papers used in the prosecution and complied with that request in part. He was then interviewed by the Assistant Chief Executive – Legal who prepared the report before the Committee today. When interviewed by the licensing officer the applicant said that he had been prosecuted and not his company as the prosecution was concerned that the company

would go into liquidation and avoid any fine. This was a position he initially took with the Assistant Chief Executive – Legal until it was pointed out to the applicant that the papers he had disclosed showed that both the applicant and his company had been prosecuted. At that point the applicant acknowledged that fact and said that the company had been fined £15000 for the offences.

The applicant gave the Assistant Chief Executive – Legal an account as to the nature of his business and the circumstances of the offences. That appears at paragraphs 10 – 17 of the officer's report. The applicant did not dispute that account today.

In deciding whether there are grounds to make an exception to policy whilst the Committee will have regard to all the circumstances of the case the Council's policy sets out 4 factors which require specific consideration. These are:-

1. The nature of the offence
2. The severity of the offence
3. The length or severity of the sentence
4. The passage of time since conviction

Taking each of these in turn the offence was one of dishonesty. This is of particular relevance in the field of licensing private hire or hackney carriage drivers. A conviction for an offence of dishonesty is one of four offences which would of itself justify a council revoking, suspending or refusing to renew a licence. The legislature therefore clearly placed greater emphasis on this type of offence than others in the context of driver licensing. The Committee consider this emphasis well placed. There is no doubt that the offence was a serious one. The purpose of the food labelling legislation is to ensure traceability of certain food products to help protect public health. This was a large scale fraud which would have involved the re-labelling of over 427,000 tins of evaporated milk. The severity of the offence is underlined by the next factor, the severity of the sentence. A custodial sentence of 6 months suspended for 2 years was imposed on the applicant. He was made the subject of a supervision order and disqualified from being a company director for 4 years. The applicant appealed these sentences to the Court of Appeal where they were upheld. In addition to the sentence given to the applicant his company was fined £15000. By any standards the sentences were severe.

The final factor the policy requires the Committee to have regard to is the passage of time since conviction. It is right to say that the applicant's convictions are spent under the Rehabilitation of Offenders Act 1974 as amended. However in the field of licensing spent convictions may be taken into account. Prior to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 coming into effect in March 2014 year the Council as a general rule disregarded offences which were deemed spent under the 1974 Act. Members considered

that the amendments made by the 2012 Act went too far and therefore after consultation with the hackney carriage and private hire trade amended the Council's policy to the one we have today. Under that policy persons with convictions for an offence of dishonesty in respect of which a custodial sentence, including a suspended custodial sentence, was imposed do not meet licensing standards. That does not mean that such persons will never be given a licence but it does mean that all applicants who fall within that category would need to satisfy the Committee that there are grounds to depart from policy and that they cannot be granted a licence under delegated powers.

The Committee take account of the fact that the convictions are now spent but note that the convictions were as recent as 2012, not yet 3 years ago.

Turning now to the general circumstances of the case there are a number of aggravating factors. These are as follows:-

1. In his dealings with the licensing officer and on his application form the applicant made light of the convictions portraying them as minor trading standards issues notwithstanding the seriousness of the sentence.
2. In his dealings with the licensing officer and later the Assistant Chief Executive – Legal the applicant tried to pretend that he was in effect the "fall guy" for his company and that he had been prosecuted instead of the company in case the company should have gone into liquidation without paying any fine. He maintained this position until the Assistant Chief Executive – Legal pointed out that the court papers that the applicant had produced clearly showed that both he and his company had been prosecuted.
3. The applicant failed to co-operate with the Council by providing all papers relating to the prosecution which he had been requested to do. Some documents including important documents such as the indictment were missing.
4. The circumstances of the prosecution were such that in addition to passing sentence upon the applicant the court felt it necessary to disqualify him from being a director of a company for 4 years, a disqualification which is still current.
5. The applicant's account of his trial is frankly not credible. Paragraph's 18 – 23 of the officer's report set out the applicant's responses to questions concerning the prosecution procedure. The Committee accept and endorse the concerns of the officer expressed in those paragraphs.
6. In his interview with the Assistant Chief Executive – Legal the applicant said that he had been in business for 28 years and had never had any trouble with trading standards. However the evidence which the applicant produced from his trial showed that in 2006 the applicant and his company were under investigation for selling food products which were not health marked. On that occasion advice was given and no further action was taken.

However the statement the applicant made that he had never had any trouble with trading standards was clearly false and the fact that he should have committed offences with regard to food labelling having been previously warned only serves to make the latter offences more serious.

7. The applicant also contradicted himself today. When interviewed by the Assistant Chief Executive – Legal he said that he had changed the best before date on the products resulting in the prosecution but with the manufacturer's consent. Today he told the Committee that he did not have such consent but was relying upon testing by an analyst.

The objectives of the licensing regime are to ensure so far as possible that those licensed to drive licensed vehicles are suitable persons to do so. That includes a requirement that they are honest. The applicant does not meet the council's licensing standards. By virtue of his convictions for an offence of food fraud and his dealings with officers in the course of his application the Committee are not satisfied as to his honesty nor that he is a fit and proper person to hold a licence. The applicant has not satisfied the Committee on the balance of probability that there are reasonable grounds to depart from its policy and his application is therefore refused.

The meeting ended at 12.30pm.