

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON
WALDEN at 2pm on 11 AUGUST 2015**

Present: Councillor R Chambers (Chairman)
Councillors 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 in attendance: The applicants in relation to Items 2, 3, 4 and 6.

LIC 12 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

The Committee decided to determine Item 6 first.

LIC13 **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.

LIC14 **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE – ITEM 6**

The Enforcement Officer presented his report. Part of the application form asked to disclose all convictions, both spent and unspent. The only offences he revealed were an offence for using a mobile phone whilst driving in 2008, and an offence of having excess alcohol in 1983 for which he was fined around £100 and disqualified from driving for a year.

An enhanced DBS check was carried out as part of the application. This revealed a conviction in 1992 for three offences; one for theft for which he was fined £110, ordered to pay compensation of £10 and costs of £33. There was also a conviction of using a false instrument for which he was fined £69 and an offence of forgery for which he was fined £46.

The Enforcement Officer said the Rehabilitation of Offenders Act 1974 permitted the Council to consider spent convictions if they were considered relevant. Additionally, making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976.

With his application, the applicant submitted a basic Scotland Disclosure Check dated 27 February 2015. This revealed no convictions. In June 2015, the Council received a letter from the applicant explaining the convictions in 1992 had slipped his mind. They related to use his use of an expired train season ticket. He explained that at the time he had been under a lot of pressure as he had just lost his father.

The applicant then attended an Interview Under Caution in July where he was asked why did had not disclosed the conviction in 1992. In response the applicant said he had used the information from his basic DBS check. He recalled attending court in 1992, but his recollection of events was poor and therefore assumed he had paid his fine. He did not mean to mislead the Council and had not been in trouble with the police since 1992.

The Enforcement Officer said the applicant was aware an enhanced DBS check was being carried out, so he should have realised the convictions would have come to the Council's attention. The Assistant Chief Executive – Legal felt a prosecution was in the public interest due to the false statement made in order to obtain a licence. As the applicant now had a pending prosecution he did not meet the Council's licensing standards.

The applicant was invited to speak by the Chairman. He reiterated that he did not mean to mislead the Council. He could not find any documentation relating to the conviction in 1992 which is why he did not disclose it. As of September last year he had been working in a bar.

The Assistant Chief Executive – Legal said the Committee should only grant a licence if it was satisfied the applicant was a fit and proper person notwithstanding the fact he did not meet the Council's licensing standards due to his pending prosecution. The applicant's previous convictions were not relevant.

The applicant, the Enforcement Officer and the Licensing Officer left the room at 2.15pm so the Committee could consider its decision. They returned at 2.40pm.

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 list all convictions (including motoring offences) both spent and unspent and any Police cautions. The applicant answered this question by declaring that he had a CU80 offence (using a mobile phone whilst driving) on his driving licence for which he was fined £60 and given three penalty points in 2008. He also declared an offence of having excess alcohol in 1983 for which he attended Harlow Court and was fined approximately £100 and given a one year ban. He did not disclose any other offences on this application.

As part of the application process applicants are required to produce an enhanced DBS check. The applicant's DBS check revealed convictions on 10 September 1992 at Mid-South Essex Magistrates for three offences. These

offences were theft for which he was fined £115, ordered to pay compensation of £10 and costs of £33, using a false instrument for which he was fined £69, and forgery for which he was fined £46.

On 15 June 2015, the Council received a letter from the applicant dated 10 June 2015 explaining that the conviction in 1992 had slipped his mind which is why he did not disclose it on his application. He explained that it was related to a train season ticket that he had been using when it had expired for which he was very sorry about. He explained that at the time he was under a lot of pressure as he had just lost his father and looking after his mother.

The applicant was interviewed under caution at the council offices with regard to the offence of making a false statement to obtain a licence. When he was questioned why he did not disclose that he had a conviction in 1992 he stated that he had used the information from his basic disclosure check in February. The applicant did recall that he did attend the Court in 1992, but his recollection was very poor and felt that he must have paid his fine. He stated that he never meant to lie to the Council or mislead it in any way. He said that since 1992 he has never been in trouble with the police and until last year held high powered jobs in the City including a money broker and a senior salesman. In light of his response the Assistant Chief Executive – Legal has determined that it is in the public interest that the applicant should be prosecuted for this offence. As the applicant has a pending prosecution he does not meet the council's licensing standards.

When an application does not meet the council's licensing standards it is for him to show that there are good reasons why the council should depart from its policy. In essence the applicant must demonstrate why he may be considered to be a fit and proper person notwithstanding the fact that he does not meet licensing standards.

In considering such applications the council's licensing policy requires the committee to have regard to four matters namely the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since conviction. With regard to the nature of the offence the applicant faces prosecution for making a false statement which is clearly an offence of dishonesty. The Local Government (Miscellaneous Provisions) Act 1976 gives council's power to suspend, revoke or not renew a licence on the grounds that since the grant of the licence a driver has been convicted of an offence of dishonesty or an offence of a sexual or violent nature. It follows that Parliament placed great emphasis on offences of dishonesty for drivers. With regard to the severity of the offence the applicant had a clear basic DBS check. The committee did not accept his explanation that he forgot about the convictions in 1992 particularly as he remembered a conviction some 9 years earlier. The committee believe that he did not disclose those convictions to the council because he thought the council would not find out. This was a deliberate act of dishonesty which the committee regards as being a very serious matter. With regard to the length or severity of the sentence this is not yet known as the prosecution is only pending but the committee take note of the fact that the maximum sentence for this offence is level 3 on the standard scale. Similarly the passage of time since conviction is not relevant to the applicant's circumstances

although if he is convicted the conviction would be recent and the applicant would therefore not meet the council's licensing standards for five years.

The applicant has advanced no reasons why the council should depart from its policy and in the circumstances and in light of the pending prosecution the committee cannot be satisfied that he is a fit and proper person. The application for a licence will therefore be refused.

The Assistant Chief Executive – Legal informed the applicant of his right to appeal the decision within 21 days of receiving a notice of the decision.

LIC15

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 2

The Licensing Officer presented her report to determine a private hire/ hackney carriage driver's licence. The applicant, as part of the application process, had been asked to disclose all convictions both spent and unspent. The applicant disclosed a speeding offence in 2012, an offence of driving without insurance in 1978 for which he was disqualified from driving for two years. The applicant attached a sheet containing five further separate convictions dated between 1976 and 1980.

Applicants were also required to undergo an enhanced DBS check. This revealed the offences on the application and the convictions on the attached sheet which were; an offence of attempting/taking a motor vehicle without consent in October 1976 for which he received a fine of £50, taking a motor vehicle without consent in May 1978 for which he received a probation order of two years, attempting/taking a motor vehicle without consent in September 1978 for which he received a probation order of two years, going equipped for theft, breach of a probation order, failing to surrender to bail and theft in March 1979 for which he received six months detention and burglary and theft of a non-dwelling in 1980 for which he was fined £75.

The Licensing Officer said that although all the applicant's convictions were spent in accordance with the Rehabilitation of Offenders Act 1974, he did not meet the Council's licensing standards which stated applicants must have "no criminal convictions for an offence of dishonesty, indecency or violence in respect of which a custodial sentence (including a suspended custodial sentence) was imposed".

In April the applicant was interviewed by the Licensing Officer, where the applicant explained the circumstances surrounding his convictions. Regarding his conviction for theft in 1979, the applicant said he used to drive around in his friend's van. They ran out of petrol and siphoned some out of a car. They were charged with going equipped for theft as they already had a hose and petrol can in the van. He had not received any convictions since 1980. After his last conviction he took a training course and became a photocopier engineer and had also been a postman for 10 years. He left his last job in March 2015, but had continued doing jobs for his previous employer on an ad-hoc basis.

The applicant was asked about his convictions and explained he was embarrassed by the convictions and was a different person to the one who received a custodial sentence in 1980.

The Assistant Chief Executive – Legal outlined the factors to be considered when departing from the Council's licensing policy. These were; the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since conviction.

The Licensing Officer and the applicant left the room at 2.55pm so the Committee could consider its decision. They returned at 3.10pm.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. On his application form he disclosed a number of convictions between 1976 and 1980. The convictions were all for offences of dishonesty. In respect of these sentences he received a range of punishments including fines, a probation order and ultimately a sentence of six months detention. His last conviction on the 14 of October 1980 was for burglary and theft from a building other than a dwelling house for which was fined £75. By virtue of the custodial sentence for an offence of dishonesty the applicant does not meet the council's licensing standards.

Where an applicant does not meet licensing standards it is for the applicant to make their case that the council should depart from its policy. Essentially the applicant must demonstrate that notwithstanding the fact that he fails to meet the council's licensing policy he is a fit and proper person.

In considering such applications the committee must have regard to a number of factors. 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

Applying these to the applicant's circumstances, all his convictions were for offences of dishonesty. This is a factor which tells against him. However the offences were all at the lower end of the scale. In general the nature of the sentence imposed was not severe, the custodial sentence apparently being imposed not because of the severity of the offence but because previous non-custodial sentences had failed to address the applicant's behaviour. The committee also note that the last offence was 35 years ago and that the applicant has had no convictions of any nature since. In the circumstances, members are satisfied that the applicant is a fit and proper person and that it is therefore appropriate to make a departure from its policy. The applicant will be granted a driver's licence.

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

The Licensing Officer presented her report to the Committee. The applicant had been licensed by the Council from March 2008 to February 2010, although he never used his licence during this period. In 2014 he re-applied for a licence, but was advised by the Licensing Officer at the time he did not meet the Council's standards as he had nine points endorsed on his licence within the previous three years. He was advised to re-apply in 2015 when the three year period had elapsed.

Applicants were required to list all convictions, both spent and unspent as part of their application. The applicant disclosed an offence for failing to stop after an accident for which he was fined approximately £600, ordered to complete 120 hours of community service and endorsed with nine points on his licence. The applicant explained he thought he had hit a deer, but it later transpired he had hit a man who died as a result of the impact. The Assistant Chief Executive – Legal, given the serious nature of the incident, had declined to grant the licence under delegated powers.

The Licensing Officer said the applicant had undergone an enhanced DBS check which revealed the offence on the application. The applicant was then invited to the Council offices to discuss his application and conviction. The applicant explained he had been returning home from work at around 11pm. He felt something hit the side of his vehicle, but assumed it was a deer as he had used the road for over a year and had never seen any pedestrians. He was shaken up by the incident and when he returned home told his wife he had hit something whilst driving home. A motorist following the applicant made a note of the applicant's registration number and shortly after arriving home, the applicant was arrested and spent the night in a police station. He was told he had in fact hit a person who had died as a result. The Police told the applicant there was nothing he could have done to avoid the accident and the only mistake he made was failing to stop, for which he was prosecuted and subsequently convicted of.

The Licensing Officer said the applicant had no convictions since 2012 and if his licence was granted he would give up his work in a restaurant and work full time as a hackney carriage driver.

The applicant was asked about the circumstances immediately after the incident. He explained that when he returned home his children could tell he was distressed as he was visibly shaking.

The Assistant Chief Executive – Legal advised the Committee that the applicant would have been breathalysed and as there was no charge for a drink driving offence, alcohol would not have been a factor in the incident. The applicant was charged for failing to stop, and not for the offences of careless, or dangerous driving. Therefore, it appeared the punishment was for the severity of the outcome and not the severity of the applicant's actions.

The applicant and the Licensing Officer left the room at 3.20pm so the Committee could consider its decision. They returned at 3.35pm.

DECISION

The applicant has applied to this council for a joint private hire/hackney carriage driver's licence. The applicant does meet the council's licensing standards, but his case has been referred to the committee by the Assistant Chief Executive – Legal at his discretion.

On 17 June 2015 the applicant was convicted of an offence of failing to stop and report an accident. In respect of that offence he was endorsed with nine penalty points. He was ordered to pay £620 costs and also received a community punishment. The circumstances of the offence are fully explained in paragraph five of the licensing officer's report. The applicant was involved in an accident with a pedestrian resulting in the pedestrian's death.

The accident occurred at approximately 11pm. The applicant states that he felt something hit the car on the passenger side and he assumed this had been a deer. A motorist who had seen the accident occur took a note of the applicant's vehicle number and immediately called the police. The police arrived at the applicant's home at 11.25pm when he was arrested and taken to the police station. It is inconceivable that the applicant would not have been breathalysed after his arrest. Members note that he was not charged with any drink drive offence and find therefore that alcohol played no part in the accident. It is also notable that the applicant was not charged with careless or dangerous driving but merely failing to stop and report an accident.

The applicant does meet the council's licensing standards. Members do not find any reason to depart from their policy and a licence will therefore be granted.

LIC17

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 4

The Licensing Officer presented her report. The applicant had initially applied for a licence with the Council in August 2014, but this application was not progressed as the applicant disclosed a conviction for perverting the course of justice in 2010 for which he was sentenced to 12 months imprisonment. Under the Rehabilitation of Offenders Act 1974 this conviction was not be deemed spent until April 2015.

When the applicant contacted the Council in October 2014, the Licensing Officer explained the conviction would not be considered spent until April 2015. He would still not meet the Council's licensing standards after this date, as he had received a custodial sentence for an offence of dishonesty.

The applicant made a second application for a licence in June 2015. He again revealed a conviction for perverting the course of justice and that he had a driver's licence refused or revoked. He also revealed a TS10 offence in July

2012 for which he was fined £60 and his licence endorsed with three penalty points.

The Licensing Officer said applicants were required to undergo an enhanced DBS check as part of their application. The applicant submitted the DBS check obtained from the County Council when he applied for a driver's licence from Southend Borough Council. This revealed the conviction in 2010 related to five separate offences committed between 2005-2007. For each offence he received a 12 month custodial sentence. These ran concurrently.

The applicant attended the Council Offices in July to discuss his application with the Licensing Officer. The applicant revealed he had been licenced by Southend Borough Council from 2003 until his conviction in 2010. He had received five Notices of Prosecution between 2005 and 2007. For each one he gave a false name and address.

The Licensing Officer asked the applicant whether he had any points endorsed on his licence at the time of receiving his first Notice of Prosecution. The applicant said he did not. He was then asked why he did not accept the points, to which he replied he did not understand the points system and did not realise giving a false name and address was a serious matter.

In response to further questions at the interview from the Licensing Officer, the applicant re-iterated that the names he gave were not of friends and family and were entirely fictitious. The Licensing Officer told the applicant she knew of another man who was also from Southend who had applied for a licence with the Council and had similar offences to the applicant. At the time the applicant said he did not know the other man.

The Licensing Officer said the Police caught the applicant out when they approached Southend Council to ask who the vehicle was licensed to. The vehicle belonged to AC Taxis whose worksheets revealed the applicant had been driving the vehicle when the speeding offences had been committed.

Following the interview, the Council received information from Southend Council that the other man who had applied to the Council lived on the same street as the applicant and had been convicted of the same offences as the applicant on the same day. The Licensing Officer asked the applicant about this. The applicant responded stating he only knew the man was a fellow taxi driver and that the names and addresses given had been false.

The Licensing Officer said the applicant had no convictions since 2010 and served 3 months of his 12 month sentence before being released on licence. He had initially found it difficult to find a job, but eventually found work as a delivery driver and in October 2014 was granted a Private Hire Driver's Licence by Transport for London. He reapplied for a licence from Southend Council but was refused on the grounds he was not a fit and proper person.

The applicant, in response to questions, said Southend Borough Council did not give a reason for not granting him a licence beyond that he was not a fit and

proper person. The applicant then produced five personal references which the Assistant Chief Executive – Legal read to the Committee.

The Assistant Chief Executive – Legal outlined the factors to be considered when departing from the Council's licensing policy. These were; the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since conviction.

The applicant and the Licensing Officer left the room at 3.55pm so the Committee could consider its decision. They returned at 4.10pm.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage driver's licence. On 28 April 2010 he was convicted of five offences of perverting the course of public justice. In respect of all these offences he was given a 12 month custodial sentence each to run concurrently with the others. Perverting the course of justice is an offence of dishonesty. As the applicant received a custodial sentence for such an offence it follows that he does not meet the council's licensing standards.

When interviewed by the Licensing Officer, the applicant stated that he had received notices of intended prosecution for five speed offences between 2005 and 2007. Unless the driver has been stopped at the scene a notice of intended prosecution is invariably accompanied by a request to give the name and address of the driver at the time of the offences were committed. The applicant stated that in response to each of the notices he had given false names and addresses. On the same day that the applicant was convicted one another man who lives in the same road as the applicant was also convicted at the same Crown Court for four similar offences. The applicant denies knowing the other man or working in consort with him with regard to the offences.

Where an applicant requests that the council should depart from its policy and grant a licence it is for the applicant to demonstrate to the committee that there are good reasons for departing from the policy. In effect the applicant has to satisfy the committee that he is a fit and proper person to hold such a licence notwithstanding that he does not meet the council's licensing standards. In considering such applications there are four matters the council's licensing policy specifically require the council to have regard to. 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

The offences are all ones of dishonesty. The Local Government (Miscellaneous Provisions) Act 1976 gives as a ground to refuse to renew a licence or to suspend or revoke a licence the fact that since a licence was granted the driver has been convicted of an offence of dishonesty or an offence of a sexual or violent nature. Dishonesty therefore falls into a category of offence which Parliament had particular regard to in framing the legislation.

The offences were serious ones. Not only were the offences serious in themselves but there were five offences committed over a period of time showing a prolonged campaign of dishonest conduct designed to avoid fines and points on the licence notwithstanding the fact that for the first three offences the applicant's licence would not necessarily have been at risk. The sentence of twelve months imprisonment for a first offence is serious indeed and demonstrates the gravity with which the courts regard offences of perverting the course of justice.

Finally, although the convictions are just spent within the meaning of the Rehabilitation of the Offenders Act 1974 they are still relatively recent. The committee is entitled to have regard to spent convictions and this is reflected in the committee's policy.

The applicant has today produced 5 personal references in support of his application. Whilst they speak of his honesty they do not refer to his convictions. Other than these references the applicant has advanced no reason why the committee should grant a licence contrary to its policy.

Under the circumstances of the case the committee is not satisfied there are grounds to make a departure from policy. By virtue of the serious convictions for five offences of dishonesty over a period of time the committee is not satisfied that the applicant is a fit and proper person to hold a licence and the application will be refused.

The Assistant Chief Executive – Legal informed the applicant of his right to appeal the decision within 21 days of receiving a notice of the decision.

LIC18

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

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 application form asked applicants to list all convictions, both spent and unspent. The applicant answered this question by stating he had no cautions or convictions. Applicants were also required to undergo an enhanced DBS check. This revealed a conviction for handling stolen goods in 1984, a conviction in 1989 for allowing himself to be carried in a vehicle taken without authority and a further conviction for driving without insurance and driving whilst disqualified.

The applicant had attended an interview under caution where he was asked why he did not disclose the convictions. The applicant, in response, said he did not disclose the convictions as he did not think they would come to the Council's attention.

In light of the false statement made and the applicant's comments in the interview under caution, the Assistant Chief Executive – Legal had decided it was in the public interest to pursue a prosecution. As the applicant had a pending prosecution he did not meet the Council's licensing standards. It was up to the applicant to satisfy the Committee that he was a fit and proper person and that there were grounds to justify a departure from policy.

DECISION

The applicant has applied to the council for a joint private hire/hackney carriage drivers licence. One of the questions on the application form asks applicants to list all convictions (including motoring offences) both spent and unspent and any Police cautions. The applicant answered this question by saying that he had no cautions or convictions.

As part of the application process applicants are required to produce an enhanced DBS check. The applicant's DBS check revealed a conviction on 15 February 1984 for handling stolen goods and a further conviction on 10 November 1989 at Chelmsford Crown Court for allowing himself to be carried in a vehicle which had been taken without authority and a further conviction of handling stolen goods. Finally there is a further conviction revealed on 27 February 1992 for driving without insurance and driving whilst disqualified. Although the DBS check did not reveal what the first disqualification was for and the applicant cannot recall why he was disqualified.

The applicant was interviewed under caution at the council offices with regard to the offence of making a false statement to obtain a licence. He was asked why he did not disclose his convictions and said that he did not think that they would show up on the DBS. In light of his response the Assistant Chief Executive – Legal has determined that it is in the public interest that the applicant should be prosecuted for this offence. As the applicant has a pending prosecution he does not meet the council's licensing standards.

When an application does not meet the council's licensing standards it is for him to show that there are good reasons why the council should depart from its policy. In essence the applicant must demonstrate why he may be considered to be a fit and proper person notwithstanding the fact that he does not meet licensing standards. The applicant has not appeared before the committee today to try to persuade the committee that there are reasons to depart from policy in his case.

In the circumstances and in light of the pending prosecution the committee cannot be satisfied that he is a fit and proper person and the application for a licence will be refused.

LIC 19

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 7

The driver had decided not to renew his licence and as a result the item had been withdrawn.

LIC20

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE – ITEM 8

The applicant had emailed the Enforcement Officer stating that he was unable to attend the meeting as he had been unable to organise leave with his current employer. In light of the applicant's email, the Committee resolved to defer determination of the application. The applicant would be invited to attend a future meeting of the Committee and would be informed that the Committee were minded to refuse the application if he did not attend.

The meeting ended at 4.30pm.