

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON at
10am on 20 NOVEMBER 2015**

Present: Councillors E Hicks (Chairman)
Councillors J Davey, S Morris and J Parry.

Officers in attendance: M Chamberlain (Enforcement Officer), C Oliva (Solicitor)
and A Rees (Democratic and Electoral Services Officer).

Also Present: The applicant in relation to Item 5.

LIC45 ELECTION OF A CHAIRMAN FOR THE MEETING

Councillor Hicks was nominated and duly elected as Chairman for the meeting.

LIC46 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from M Perry (Assistant Chief Executive –
Legal).

LIC47 DETERMINATION OF A PRIVATE HIRE OPERATOR'S LICENCE

The report had been withdrawn.

LIC48 DETERMINATION OF PRIVATE HIRE VEHICLE LICENCES

The report had been withdrawn.

LIC49 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.

**LIC50 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS
LICENCE**

The Enforcement Officer presented his report. The applicant had applied for a
private hire/hackney carriage driver's licence on 18 July 2015. Applicants were
asked on their application forms to list all convictions (including motoring
offences) both spent and unspent, as well as any police cautions. The applicant
answered the question by stating that he had no cautions or convictions.

Enhanced DBS checks were required to be carried out for each applicant. This revealed a conviction for obtaining pecuniary advantage by deception in January 1974 for which was fined £10 and ordered to pay restitution of £0.12. There was also a further conviction in January 1989 for assault occasioning actual bodily harm for which he was fined £500, ordered to pay costs of £100 and compensation of £400.

The Enforcement Officer said that the Rehabilitation of Offenders Act 1974 permitted spent convictions to be considered if they appeared to be relevant. Making a false statement to obtain a licence was an offence under the Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000 upon conviction.

The applicant had attended an Interview Under Caution at the Council Offices on 21 October 2015. At the interview, the applicant explained he had previously been licensed with Public Carriage Office for 10 years and was currently licensed by Maldon District Council. The applicant confirmed he had completed the application form by himself, but had not read question 12 properly and did not think it was important to disclose the offences as they were a long time ago. He had assumed the enhanced DBS check would show the convictions so he had not considered the question important. Although he could not recall the offence in 1974, he said the offence in 1989 was because he had started a fight in a night club.

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 considered it in the public interest to seek a prosecution for the offence of making a false statement in order to obtain a licence.

The applicant did not meet the Council's licensing standards as he had a pending prosecution. Therefore the Assistant Chief Executive – Legal had referred the matter to the Committee to consider whether the applicant was a fit and proper person to be granted a licence.

The Chairman invited the applicant to speak. The applicant said that he had not been intentionally dishonest and had just been careless whilst completing the application form. He knew the convictions would be disclosed by the enhanced DBS check and had he read the question on the application form properly he would have disclosed his convictions.

The applicant explained that his conviction for ABH was because he started a fight with a bouncer at a night club after the bouncer had made an approach towards one of the applicant's female friends. He could not recall the circumstances surrounding his conviction in 1974.

The Enforcement Officer and the applicant left the room at 10.15am so the Committee could consider its decision. They returned at 10.40am.

DECISION

The applicant has applied to the council for the grant of a joint private hire/hackney carriage driver's licence in July of this year. One of the questions on the application form asks an applicant to list all convictions both spent and unspent. The applicant answered this question by saying that he had no cautions or convictions.

As part of the licensing process the council obtains an enhanced Disclosure and Barring Service check for each applicant. The applicant's DBS check was carried out in September this year. The result showed a conviction on 31 January 1974 at Newham West Magistrates for obtaining pecuniary advantage by deception for which he was fined £10 and ordered to pay restitution of 12p. There was a further conviction at Marlborough Street Magistrates Court for an offence of assault occasioning actual bodily harm for which he was fined £500 and ordered to pay costs of £100 and compensation of £400.

These offences are spent within the meaning of the Rehabilitation of Offenders Act 1974 but by virtue of section 7(3) of that Act the convictions may be considered by a local authority when 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 and a prosecution is pending. 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 with regard to the offence the applicant explained that he had been previously licensed by the Public Carriage Office for approximately 10 years. He also stated that he is currently licensed by Maldon District Council. He confirmed that he had filled in the application form himself and had done about 4 in the last 10 years for other authorities. He stated that he did not read question 12 properly and did not consider it important as his criminal offences were a long time ago. He assumed that the DBS check would show up all offences and saw little point in the question on the application form.

Had the applicant disclosed his convictions on the application form, a licence would have been granted. 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. However, upon hearing the applicant the Committee is satisfied that the applicant made an error of judgment and was not intentionally dishonest in failing to disclose these old convictions. The Committee acknowledges that because of the pending prosecution of the applicant a decision to grant a licence to him is contrary to the Council's policy on the grant of licences but it is considered that the applicant is a fit and proper person to hold a private hire/hackney carriage drivers licence.

The meeting ended at 10.45am.