

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH  
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON  
WALDEN at 10am on 22 DECEMBER 2015**

Present: Councillor R Chambers (Chairman)  
Councillors J Davey, R Gleeson and T Goddard

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)

Also Present: Mr Popescu, the applicant in relation to Item 3, the applicant in  
relation to Item 5, the driver and his brother in relation to Item 6.

LIC55 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

*The Committee decided to determine Item 4 last.*

LIC56 **DETERMINATION OF A PRIVATE HIRE HACKNEY CARRIAGE DRIVERS  
LICENCE – ITEM 2**

Councillor Chambers read out the licensing procedures for considering private  
hire/hackney carriage drivers' licences.

The Enforcement Officer presented his report. Mr Popescu had been licenced  
by the Council since 3 June 2014, with his current licence due to expire on 31  
May 2016.

On 26 November 2015, the Council received information from members of the  
licensed trade that between four and six weeks ago that Mr Popescu went into  
a petrol station in Royston in order to buy some alcohol. The cashier refused to  
sell alcohol to Mr Popescu and telephoned the Police as Mr Popescu drove off.  
The Police chased Mr Popescu who crashed and he was caught drink driving.

*Councillor Goddard entered the meeting.*

The Enforcement Officer made an enquiry with the Police about the allegation  
and received a response on 4 December from PCSO Johnson who said the  
case was being dealt with by an officer based in Parkside Police Station in  
Cambridge. The Enforcement Officer then made enquiries with both  
Cambridgeshire and Hertfordshire Police, although no response had currently  
been received. An attempt had also been made to contact Mr Popescu but  
again no response had been received.

The licensing department had carried out an online driver check against Mr  
Popescu's licence on 10 December 2015. This revealed that he was  
disqualified from driving until 9 September 2017 for a DR10 offence (driving or

attempting to drive with an alcohol level above the limit. The check showed the offence took place on 24 October 2015 and he was convicted on 10 November 2015.

The Enforcement Officer said Mr Popescu's failure to report the conviction to the Council within seven days was a breach of his licensing conditions. He also no longer met the Council's licensing standards as he had been disqualified from driving. It was therefore up to Members to decide whether he remained a fit and proper person to hold a private hire/hackney carriage driver's licence. The Council had now received a letter from Mr Popescu's employer which stated that they would no longer be using him.

The Chairman invited Mr Popescu to speak. Mr Popescu apologised for his actions. He didn't inform the Council of his conviction for drink driving as he had given his badges to his employer and did not realise he had to personally inform the Council of his conviction.

The Assistant Chief Executive – Legal informed the Committee that since Councillor Goddard had arrived whilst the item was being considered, he could not vote on the decision.

The Enforcement Officer, Licensing Officer, Mr Popescu and Councillor Goddard left the room at 10.10am so the Committee could consider its decision. They returned at 10.15am.

LIC57

## **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.

## **DECISION**

The Committee did not consider Mr Popescu to be a fit and proper person to hold a hackney carriage/private hire drivers licence and his licence was therefore revoked with immediate effect in the interests of public safety.

LIC58

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

Councillor Chambers read out the licensing procedures for considering private hire/hackney carriage drivers' licences.

The Licencing Officer presented her report. On 20 October 2015 the applicant had applied to the Council for a private hire/hackney carriage driver's licence. One of the questions on the application form asked applicants to list all convictions, both spent and unspent. In answer to this question, the applicant

disclosed spent convictions for theft, taking a conveyance without authority and for burglary, but he could not remember the exact dates or sentences.

The Council was required to obtain an enhanced DBS certificate for each applicant. This revealed eight convictions which were as follows; 1 November 1982 theft from a vehicle for which he received a 12 month supervision order; 19 September 1983 theft for which he received a 2 year supervision order; 19 September 1984 burglary and theft-non-dwelling for which he received a community service order of 100 hours; 28 November 1985 failing to surrender to bail and theft-shoplifting for which he received fines; 9 January 1987 taking a conveyance without authority for which he received 3 months in a detention centre, was fined and disqualified from driving for 6 months; 2 September 1987 burglary and theft non-dwelling for which he received 28 days in a detention centre; 26 February 1988 burglary and theft non-dwelling for which he was given a 2 month custodial sentence; handling for which he was given a 2 month consecutive custodial sentence; burglary and theft- non-dwelling for which he was given a 2 month consecutive custodial sentence; taking a conveyance without authority for which he received a 2 month custodial sentence to run concurrently.; burglary and theft dwelling for which he received 6 months youth custody and 25 February 1992 criminal damage for which he was fined £75.

The Licensing Officer said the applicant did not meet the Council's licensing standards as although all of his convictions were spent under the Rehabilitation of Offenders Act 1974, the Council's Licensing Standards stated that 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".

On 4 December 2015 the applicant was interviewed by the Licensing Officer about the circumstances surrounding his convictions. The applicant explained at the time of the first conviction he had just turned 15 and had come under the influence of an older boy who got him into trouble. When asked about the convictions in 1987 and 1988, the applicant said the conviction in January 1987 for taking a conveyance without authority related to an incident where he had been a passenger in a car which one of his friends had stolen. He couldn't recall the incident which led to the conviction in September 1987. Regarding the convictions in February 1987 the applicant explained that his friend had committed the burglary, but because he was holding some of the stolen items he was also charged with burglary.

The Licensing Officer said the applicant had spent six months in detention in Dorset. Whilst in detention he passed his 'O' Level maths exam and worked in a school for disabled children during the last three months of his detention. He moved back to Plymouth and on his 21<sup>st</sup> birthday met a girl whom he married four months later and they had been married for 18 years. He then worked in a fish factory until he lost his finger. The applicant worked as a private hire driver in Plymouth for 13-14 years and worked in waste management in Devon before he moved to Essex in 2012. He had subsequently driven lorries for Comet and worked for the Council as a loader and driver through the agency Good People.

The Chairman invited the applicant to speak. The applicant explained that he needed the job as his wife could no longer work due to illness. He had learnt his lesson following his six months in detention and had been licenced as a private hire driver in Plymouth for over a decade.

The Assistant Chief Executive – Legal said it was not relevant whether the applicant had been licenced by another authority as different authorities had different licensing standards. The applicant's wife's health was not relevant in determining whether the applicant was a fit and proper person.

The applicant did not currently meet the Council's licensing standards. When deciding whether to make an exception to policy, the Committee should have regard to; the nature of the offence, the severity of the offence, the length or severity of the sentence and the passage of time since the conviction.

The Enforcement Officer, the Licensing Officer and the applicant left the room at 10.20am. They returned at 10.40am.

## **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 details of which are set out in the officer's report. The convictions were mainly for offences of dishonesty. In respect of these offences he received a range of punishments including custodial sentences. By virtue of the custodial sentences for offences 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, most of 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 sentences imposed were not severe, the custodial sentences apparently being imposed not because of the severity of the offences but because previous sentences had failed to address the applicant's behaviour. The committee also note that the last offence was 22 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.

LIC59

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

Councillor Chambers read out the licensing procedures for considering private hire/hackney carriage drivers' licences.

The Enforcement Officer presented his report. The applicant had made an application for a private hire/hackney carriage driver's licence on 21 September 2015. The application form asks applicants to list all cautions and convictions both spent and unspent. The applicant answered this by stating that he had no cautions or convictions.

The Council was required to request an enhanced DBS check for each applicant. This revealed that the applicant had received a caution on 4 September 2008 for persistently soliciting a woman for prostitution from a motor vehicle or causing annoyance/nuisance to others.

The Enforcement Officer said Section 7(3) of the Rehabilitation of Offenders Act 1974 permitted spent convictions to be considered if they were deemed relevant. Making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000 upon conviction.

The applicant attended the Council Offices for an Interview Under Caution (IUC) on 30 November 2015. At the IUC the applicant said he had read the questions on the application, his wife had then completed the form which he then checked over and signed. The applicant then outlined the circumstances surrounding his caution. He explained that as he was driving he noticed a woman at the corner of the street who flagged him down. He asked her whether she was okay. She said no, but asked the applicant whether he wanted any business. He declined but then asked for her phone number which she refused to give. The applicant said that walked back to his car and was then pulled over by an unmarked police car. When he dealt with the police he had to do so through an interpreter as his English was poor at the time. When he was offered a caution he accepted it as he felt shameful and did not want to go to court as his wife would find out. He remembered signing some paperwork, but did not realise what it was for as his English was poor at the time. When the applicant asked why he did not disclose the caution he said that because he did not go to court he did not think he had to disclose it.

The Enforcement Officer said the applicant was aware that 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 did consider it in the public interest 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 and as a result the Assistant Chief Executive – Legal had referred the matter to members to consider whether he was a fit and proper person to be granted a licence.

In response to a question by Councillor Goddard, the Assistant Chief Executive – Legal said that if the Committee considered the applicant to be a fit and proper person to hold a licence it was likely he would consider that a prosecution was no longer in the public interest.

The Chairman invited the applicant to speak. The applicant said that he did not know why he asked the woman for her telephone number. He did not fully understand that he had received a caution so he did not think he had to disclose the offence.

In response to questions by Members, the applicant said he was told the caution went no further and hadn't wanted to go to court as he didn't want his wife to find out about the matter.

The Enforcement Officer and the applicant left the room at 10.55am so the Committee could consider its decision. They returned at 11.25am.

## **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 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 police caution on 4 September 2008 for an offence of persistently soliciting a woman for prostitution from a motor vehicle or causing a nuisance or annoyance to others on 18 August 2008.

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 gave an explanation for the offence which is set out in the officer's report. He said that he accepted a caution rather than face a prosecution as he was embarrassed and did not want his wife to learn of the offence. He said that his wife completed the application form for his licence. She was not aware of the caution so made no reference to it. However the applicant acknowledged that he read the form to check for accuracy and signed it. When asked why he did not disclose the caution he said that he did not fully understand that he had received a caution and believed that because he had not gone to court he did not need to disclose it.

The committee do not find that account credible. The applicant was apprehended on the night of the offence. However he was not cautioned until just over 2 weeks afterwards. This means that the caution was administered at

a pre-arranged appointment, quite possibly when answering to police bail. The applicant had the assistance of an interpreter. He made an informed decision to accept a caution rather than go to court. Although his English is not strong members of the committee are satisfied on the balance of probabilities that the applicant knew and understood precisely what he was signing. He chose to accept the caution as in his mind it would mean that his wife would not find out about the offence. He failed to disclose it on his application form because to do so would mean he would have to tell his wife and he hoped that as he had not been to court it would not be revealed by the DBS check.

The Assistant Chief Executive – Legal has determined that it is in the public interest that the applicant should be prosecuted for the offence of making a false statement to obtain a licence. As the applicant has a pending prosecution he does not meet the council's licensing standards.

When an applicant 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 for which the applicant is facing prosecution, making a false statement 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 did not disclose the convictions to the council because, putting it bluntly, he did not think the council would 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 driver of his right to appeal the decision within 21 days of having been deemed to have received a notice of the decision.

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

Councillor Chambers read out the licensing procedures for considering private hire/hackney carriage drivers' licences.

The Enforcement Officer presented his report. The driver had held a licence with the Council since 27 April 2015, with the current licence due to expire on 31 March 2016.

On 19 November 2015, the Council received information from 24x7 Ltd that they had terminated the employment of the driver on the grounds of serious misconduct involving two 15 year old girls. 24x7 Ltd had no further details but arranged to collect the driver's badge and send it back to the Council.

The Enforcement Officer then made enquiries with the Passenger Transport Analyst at Essex County Council. She said a complaint had been made by a parent and the school had referred it to Essex Safeguarding and the Police. Subsequent enquiries with the Police showed that the Brentwood Child Abuse Investigation Team were seeking to arrest and interview the driver.

The Council received a letter on 30 November 2015 which stated the driver was arrested on 24 November on suspicion of abduction. This related to instances on 17 and 18 November 2015 where it was alleged that whilst collecting children from school, the driver returned the children home late as a result of being taken into a forest and other locations en route. The driver had been granted bail and his conditions stated he could not have any unsupervised access to or control of children aged under 16 years of age.

The Enforcement Officer said that after receiving the letter, the driver's licence was suspended under delegated powers, with immediate effect in the interest of public safety on 3 December 2015. The suspension was due to last until 23 December 2015. The driver also breached the conditions of his licence as he failed to notify the Council of the investigation within seven days. It was therefore up to Members to determine whether he remained a fit and proper person to retain his licence.

In response to questions by the driver's brother, the Enforcement Officer said he had been told by Murray Hardy that the allegations related to two 15 year old girls. He had then subsequently been told the two children were aged eight and ten. The County Council's Passenger Transport did not give any information about the nature of the allegations, which was why subsequent enquiries had been made with the Police. It had not been specified whether the applicant had entered the forest with the children.

The Assistant Chief Executive – Legal explained said that all drivers were required to sign receipt that they had received their private hire licence and the conditions of the licence. Failure to notify the Council of the investigation into the allegations was a breach of the driver's licensing conditions. Ordinarily this would have been dealt with by a five day suspension, provided there were no



aggravating or mitigating factors. However, since the driver had already been suspended for a longer period no further action was necessary in respect of that breach.

In response to a question by Councillor Goddard, the Enforcement Officer said that it was normal for neither the Police nor Essex Safeguarding to attend the meeting and to only communicate via email.

The Chairman invited the driver and his brother to speak. The driver's brother said the driver had been employed by 24/7 Ltd from April 2015. For the first three months he was accompanied by a co-driver before driving by himself. He was given a contract to take a boy and a girl to and from school. It did not appear that the driver had ever received a copy of the licensing conditions. He then noted the driver was arrested for attempted abduction and not for abduction.

The driver's brother said the driver had never been provided details of a specific route he had to take and there was no prescribed time the children had to be dropped off by. At no point had he driven into the woods, he had only driven past them.

A couple of days before the alleged incident, the driver had noticed a deer and asked the children whether they had ever seen a deer rutting. Both children said they hadn't. The driver then said that if the children got permission from their parents he would drive them to the forest to see. The girl ran straight to her door, but the driver walked to the boy's front door to ask his mother whether she would allow him to take the boy to the forest to watch the deer. The boy's mother gave her permission for the driver to do this.

The next day, whilst taking the children home, he saw a deer again. He got the girl to phone her mother to see whether the girl would be allowed to go and look at the deer. The girl's mother said she couldn't.

The driver's brother said the driver was then contacted by Murray Hardy who said 24/7 Ltd had received a complaint about his conduct. The driver was subsequently fired by 24/7 Ltd for serious misconduct. There had been a number of failures by 24/7 Ltd. These included getting the age of the children which the allegations related to incorrect. The driver had not committed any offence.

The applicant's brother presented the conditions of the drivers bail to the Committee. He said the conditions did not appear to include the driver having no unsupervised access to children aged 16 years or under as the letter said the conditions were included below and not overleaf. The conditions of the driver's bail were handed to the Assistant Chief Executive – Legal. After inspecting the letter he said it appeared to be a legitimate condition of the driver's bail.

In response to questions by the Enforcement Officer, the driver's brother said they had spoken to the Citizens Advice Bureau, but had not yet decided whether they would be taking action against 24/7 Ltd. The driver would be

looking for other employment as a private hire driver. The driver outlined his working career and explained that because his work as a private hire driver was for around two hours a day he considered himself to be retired.

The Assistant Chief Executive – Legal said that the driver should not have signed a receipt which indicated he had received the licensing conditions if he hadn't received them.

When determining the licence the Committee had to be satisfied on the balance of probabilities that the driver was a fit and proper person to hold a private hire/hackney carriage driver's licence.

The Enforcement Officer, the driver and his brother left the room at 12.30pm so the Committee could consider its decision. They returned at 1.55pm.

## **DECISION**

The driver was licensed by this council as a private hire/hackney carriage driver in April of this year. He was employed as a schools contracts driver by 24 x 7. 24 x 7 is the largest operator in the district and the committee are familiar with its operation. It is regarded as being a responsible operator. The committee is aware that a proportion of 24 x 7's work is concerned with transporting children with special needs. The driver has told us that he was not engaged in this side of the business at the time a complaint was made against him. He was ferrying children to and from school who qualified for transport as they live outside the catchment area of their school and off of a bus route. From the information given to the committee we assume that the driver did not drive with an escort which is generally the case with children with special needs.

After joining 24 x 7 the driver worked with another driver for 3 months. After that he was given a vehicle and allocated a contract to drive 2 children, a girl and a boy aged 10 and 8, to and from school.

In November this year something happened to give rise to a complaint. As a result 24 x 7 summarily dismissed the driver from his employment. The driver was also arrested on suspicion of attempted child abduction and is currently on police bail. The driver was critical of the content of the officer's report in a number of respects. The report was based upon information given to the officer which he acted upon in good faith. However it appears there are some errors in the information he was given. For example he was initially informed the allegation involved 2 15 year old girls which is not the case. He was also told that Essex had previous child care concerns arising from a DBS check. Whilst such a check was not available today members assume that the check obtained when the driver was licensed by the council was clear otherwise the licence would not have been granted which begs the question what were the concerns which Essex County Council had? Further the officer was informed that the driver was bailed to return to Grays police station whereas he is in fact due to surrender to Harlow. The evidence in the report therefore lacks the degree of reliability that the committee would prefer to have. Further details of the allegation giving rise to the driver's dismissal from his employment and his arrest are sketchy. It is alleged that on 2 occasions on 17 and 18 November the

driver returned the children to their home late as a result of taking them to the forest and other locations en route. The driver does not accept that he took the children to any location. None of these shortcomings in the evidence is to be taken as a criticism of the officer who as we have said acted in good faith and was passing on all the information he had been able to obtain.

The committee did not find the driver to be a convincing witness. One of the matters referred to in the officer's report was a breach of a condition of the licence for not notifying the council of the police investigation within 7 days. This allegation of itself is not of concern to the committee today as if this were the only matter for consideration no action would be taken. However the driver's response to the allegation calls his credibility into doubt. He maintains that he did not receive the conditions of his licence and was therefore unaware of them. When a new licence is issued it is sent under cover of a letter with a copy of the conditions attached. The driver's badge is also enclosed. 24 x 7 generally collect the pack containing the letter, condition of licence and badge and deliver them to their drivers. The driver had the badge but denies receiving the conditions. He gave no explanation as to why, if that was the case, he signed an acknowledgement of receipt and an undertaking to be bound to the conditions attached to the letter. It is not credible that 24 x 7 would not pass the conditions on to its drivers. 24 x 7 are well aware that breaches of condition frequently lead to suspensions of drivers' licences which is detrimental to its business.

The committee were also concerned at inconsistencies in the driver's account of what happened. He explained that he was not given a designated route for the journey to and from the children's homes. He said there were 3 routes which you could use one of which may be 200, 300 or 400 yards longer. However on the evenings when he acknowledges that he was late returning the children he said he was 15 – 20 minutes late. That is a much longer distance than 400 yards.

The driver said that on one evening while he was driving the children home a deer jumped into the road. He asked if the children had ever seen deer rutting and they told him they had not. He suggested that with their parents' permission he may take them to the forest to see some deer. On 18 November he was driving the children home. He said that he had the permission of the boy's mother for him to see the deer. He turned right off of the route he was taking instead of going straight on and gave his mobile telephone to the girl for her to call her mother for permission. He says that at the time the girl's mother was in hospital awaiting a transplant. Permission was refused and he took the children home arriving between 15 – 20 minutes late.

Based entirely upon the driver's account of events the committee consider that he has acted entirely inappropriately. Schools contracts drivers should be professional at all times. They should drive the children in their care to and from school using the shortest or quickest route reasonably available. Whilst they should be friendly with the children they drive they should not form a relationship with them. The driver says that it is accepted practice to use different routes from time to time. The committee accept that deviations due to traffic conditions, road works etc. may be justified but do not accept that

deviations are appropriate purely to avoid boredom on the part of the children. School buses for example do not deviate from their routes.

In any event what happened on 18 November is not that the driver was taking a different route. He was diverting from one of the 3 routes he says he routinely used for another purpose, namely to take the children to see some deer. The fact that this subject even arose shows that the driver was entering into a relationship with the children which the committee find to be inappropriate. The fact that the driver does not appreciate the inappropriateness of his conduct is underlined by the fact that he considers that it would have been in order for him to take the children to the forest in his own car at the weekend subject to the parents agreeing. That is not the type of relationship that school contracts drivers should be developing with those they drive.

Because the driver was forming an inappropriate relationship with children in his care members are satisfied on the balance of probabilities that he is not a fit and proper person to be licensed by this authority and his licence will be revoked. The committee consider that in the interests of public safety it is necessary for the revocation to have immediate effect for the reasons given in this decision.

The Assistant Chief Executive – Legal informed the driver of his right to appeal the decision within 21 days of having been deemed to have received a notice of the decision.

LIC61

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

The Committee decided to determine the application in the applicant's absence.

The Enforcement Officer presented his report. The applicant had applied for a licence on 25 September 2015. The application form asked applicants to list all convictions, both spent and unspent. The applicant answered this by stating that he had a caution for damage to plants in approximately 1995.

The Council was required to undergo an enhanced DBS check for each applicant. This revealed that the applicant had the following convictions; 11 March 1967 for factory breaking and entering; 31 March 1967 for two offences of larceny for which received a 12 month conditional discharge, costs of £1 and restitution of 37p; 6 September 1969 for indecent assault of a female aged under 14 for which he was fined £3 and a conviction for theft on 23 June 1989 which he was fined £185 and costs of £15.

The Enforcement Officer said Section 7(3) of the Rehabilitation of Offenders Act 1974 permitted spent convictions to be considered if they were deemed relevant. Making a false statement to obtain a licence was an offence under section 57(3) Local Government (Miscellaneous Provisions) Act 1976 and carried a fine of up to £1000 upon conviction.

The applicant attended the Council Offices on 30 November 2015 for an Interview Under Caution. He was questioned by the Enforcement Officer about the offences. The applicant explained the circumstances surrounding the convictions in 1967. He said he had got into the wrong crowd. The conviction for indecent assault was just kids messing around with a girl at school. There was mutual consent and there was no intercourse or touching. The offence in 1989 related to an incident where he stole some window frames from a building site he was working on. In 1995 the Police gave him a verbal warning for damaging a neighbour's garden when erecting a fence.

The applicant then explained that he hid not disclose the convictions because he had heard that he did not need to reveal convictions which were beyond a certain age. He was not trying to hide anything and knew the convictions would come to the Council's attention.

The Enforcement Officer said the applicant was aware that 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 did consider it in the public interest 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 and as a result the Assistant chief Executive – Legal had referred the matter to members to consider whether he remained a fit and proper person to be granted a licence.

The Assistant Chief Executive – Legal informed the Committee that when an applicant did not meet the Council's licensing standards, the burden of proof was on the applicant to satisfy the Committee they were a fit and proper person to hold a licence.

## **DECISION**

Members of the committee were informed that the applicant had not attended to put his case before the committee. Members noted that the applicant does not meet the council's licensing standards as he has a pending prosecution. Where an applicant for a licence does not meet the council's licensing standards, the onus of proof is upon him to satisfy the committee that there are good reasons for it to depart from its policy and grant a licence. As the applicant did not attend he was not in a position to discharge that burden and accordingly the application for a licence was refused.

The meeting ended at 2.10pm.