

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH  
COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON  
WALDEN at 10am on 23 JANUARY 2017**

Present: Councillor R Chambers (Chairman)  
Councillors G Barker and E Hicks.

Officers in attendance: M Chamberlain (Enforcement Officer), T Cobden  
(Principal Environmental Health Officer – Head of Licensing), R  
Dobson (Principal Democratic and Electoral Services Officer), J  
Jones (Licensing Officer), E Smith (Solicitor) and M Watts  
(Principal Environmental Health Officer).

**LIC42 APOLOGIES FOR ABSENCE**

There were no apologies for absence.

**LIC43 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.

**LIC44 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE  
DRIVER'S LICENCE**

Members considered a report in relation to agenda item 2.

The Chairman welcomed the Driver and her mother, who was attending as her  
daughter's representative. The Chairman introduced all Members and officers  
and then explained the process.

The Licensing Officer presented a report asking Members to consider an  
application for a private hire/hackney carriage driver's licence. The report gave  
details of the applicant's responses to a question on the application form asking  
applicants to list all convictions, including motoring offences, both spent and  
unspent, and any police cautions. The applicant had attached to her application  
an old Disclosure and Barring Service (DBS) certificate showing 13 convictions  
between January 2006 and February 2010. The Council had as part of the  
licensing process obtained an enhanced DBS certificate for the applicant, dated  
15 November 2016, showing no additional convictions and giving the details of  
the offences stated in her application.

The report set out details of the circumstances of the convictions. The  
Licensing Officer said that in her interview under caution the Driver had  
explained that many of the incidents during that period of her life which had  
resulted in these convictions arose from difficulties she had had in her

relationship with her mother, in particular regarding failures to comply with curfews. The Licensing Officer said the Driver had then had a child of her own, and had explained that she had turned her life around. She had had a regular job for three years and had now received an offer of employment as a Driver.

The Chairman thanked the Licensing Officer and invited the Driver and her mother to ask any questions they might have. Upon there being no questions, the Chairman invited the Driver's mother as her representative to make a statement.

The Driver's mother said the events which had led to the convictions had all happened a long time ago. Her daughter had after moving house found it difficult to adjust, having missed her friends and her grandparents. She had been through a difficult time, but she now had a child and a job, and had turned her life around. She was very proud of her.

The Driver said when she had been forced to move house at that time in her life, she had become rebellious. Since having her own child she was trying to do her best to better herself and provide a good future for her child.

Councillor Hicks said clearly the Driver had had a chequered past as a teenager. He asked how old she was now.

The Driver said she was 25 years old.

Councillor Hicks asked how the Driver thought she had changed.

The Driver said she was a Mum, she had responsibilities, and that she had to be a role model. She was no longer angry, but was happy now. She and her mother had sorted out their differences. There was no excuse for what she did, though, and she was very sorry about it.

The Committee withdrew at 10.15am to determine the application.

At 10.20am the Committee returned to give its decision.

## DECISION

The Driver's application dated 24th June 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, she has an offer of employment from Happicabs working shifts around her office based role in a tanning salon, which she has held for three years.

However, an enhanced DBS check dated 15th November 2016, confirmatory of one produced by the Driver at the time of her application, revealed that The

Driver does not meet Point 5 of the Council's Licensing Standards, which state that a driver 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."

The Driver's Enhanced DBS Check revealed the following matters:-

1. 3.1.06 – Criminal Damage – Mid South Essex Juvenile Court – 24 hours Attendance Centre
2. 20.6.06 – Police Assault x2, failure to surrender to custody – Mid South Essex Juvenile Court – 3 months Detention and Training
3. 11.7.06 – Public Order and Criminal Damage offences - Basildon Youth Court – No separate penalty
4. 3.11.06 – Theft x 2, failure to surrender to custody – South West Essex Magistrates – 9 months Supervision Order.
5. 3.11.06 – failure to comply with Detention and Training Order – South West Essex Magistrates – no separate penalty.
6. 30.1.07 – Disorderly behaviour – Mid South Essex Juvenile Court – 3 months Reparation Order.
7. 17.4.07 – Breach of Reparation and Supervision Orders – Mid South Essex Juvenile Court – no action.
8. 25.5.07 – Public Order Offence – South West Essex Juvenile Court – Supervision and reparation Orders revoked – 4 months Detention and Training.
9. 8.6.07 – Breach of curfew arising from No 8 above – South West Essex Juvenile Court – no action..
10. 2.10.07 – Breach of Supervision Order – Mid North Essex Magistrates – order continues.
11. 20.11.07 – Breach of Supervision Order – Mid North Essex Magistrates – Order revoked.
12. 9.4.08 – Failure to comply with Detention and Training Order – South East Essex Magistrates – £50 fine plus costs.
13. 17.2.10 – Battery – Mid North Essex Magistrates – 16 weeks Youth Custody suspended for 12 months.

Though she is a rehabilitated person in respect of all these offences under the Rehabilitation of Offenders Act 1974, this legislation does not apply to all scenarios, and included among these is the holding of Private Hire and Hackney Carriage Drivers licences.

In support of her application, the Driver states that with the exception of the 2010 offence, see post, the offences arose as a result of a move of home unwelcome to her which led to her becoming involved with a bad crowd, and a consequential deterioration in her relationship with her mother, since repaired. Her mother accompanied her to interview [and is here today]. We understand that the 2010 incident arose in a nightclub and that the Driver and her companion were not the aggressors; that their reactions were initially self defence and that they were detained in a larger group.

Unfortunately in aggregate, these are serious matters and although the overwhelming majority of them took place years ago, the Rehabilitation of Offenders Act 1974 does not apply to proceedings before this Committee.

We have listened to what the Driver and her mother have to say and we have read the material provided most carefully. She now has a daughter has held down a steady job for three years. We believe that she has turned her life around and accepts responsibility for her previous actions.

Accordingly we grant this application, and the Driver will receive the paperwork in due course.

LIC45

#### **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

Members considered a report in relation to agenda item 3.

The Chairman welcomed the Driver and his friend, who was attending as interpreter.

The Solicitor said it was important that the Driver and his interpreter be aware that all the interpreter could do would be to translate, not to speak on the Driver's behalf. The interpreter said he and the Driver understood this point.

The Chairman introduced all Members and officers and then explained the process.

The Enforcement Officer presented the report, allowing time for each sentence to be interpreted to the Driver. He said the Driver, if granted the application, intended to driver for a particular licensed private hire operator, but that the operator's licence had been repealed, with the hearing due in March.

The Chairman emphasised to the interpreter that he should say if the Driver had a question.

The Enforcement Officer said as part of the licensing process the Council had obtained an enhanced DBS check for the Driver. The DBS check dated 12 August 2016 was clear. An online driver check from DVLA records showed the Driver had received three penalty points for a TS10 offence (failing to comply with traffic light signals) on 23 February 2013, which had been disclosed on the application. This check had also showed that the Driver had been convicted and received six penalty points on 27 July 2016 for an MS90 offence (failing to give information as to the identity of the driver) which took place on 16 December 2015. This conviction was the day after the Driver had completed his application form in which he had stated he had no pending prosecutions.

Following the presentation of the report, the Chairman invited the Driver to ask questions. The Driver said he had no questions.

The Chairman asked about the interview under caution which took place on 30 November 2016 with the Council's officers. He asked whether the Driver had subsequently attended a further interview with an interpreter.

The Enforcement Officer said the Driver had not, due to the cost. He confirmed the Driver had been unaccompanied at the interview.

Councillor Hicks referred to the conviction for refusing to give the identify of a driver. He asked whether it had emerged who had been in charge of the vehicle.

The Enforcement Officer said it had not.

In response to a question from Councillor G Barker, the Enforcement Officer said interviews were recorded in accordance with the legislative requirements.

The Chairman invited the Driver to speak.

The Driver's interpreter said he would speak for the Driver.

The interpreter said regarding the conviction for speeding, the Driver was in the passenger seat and was trying to teach a friend who had just arrived from

Romania to drive. The friend was not insured and went past a speed camera and then another one. The Driver stopped the car and took over. The Police contacted his friend, who at first said it had been he who had been driving, but then he had changed his mind. The Driver had then received the points. When the Driver was completing his form for the application he hadn't intended to omit the information.

The Solicitor asked the interpreter to stop making the statement. She said he appeared to be admitting on behalf of the Driver to other offences. The Committee could continue to determine this application, but it was possible that if the interpreter was admitting other offences on the Driver's behalf that other authorities might need to be involved. Additionally, what was being admitted could be taken into account today by this Committee.

The interpreter explained the position to the Driver.

The Chairman halted proceedings to enable the panel to retire to consider the matter.

At 10.50am the Committee withdrew to determine the application.

At 11.15am the Committee returned to give its decision.

## DECISION

The Driver's application dated 26th July 2016 is for a Private Hire/Hackney Carriage Driver's licence. If successful, he intends to drive for West End Cars, whose appeal against this Authority's decision to revoke its operators' licence is to be heard by Basildon Magistrates on 20th March 2017.

However, the Council's routine DVLA check dated 28th September 2016 revealed a TS10 conviction (failing to comply with traffic lights) on 23rd February 2013, which was disclosed. However, it also showed a conviction dated 27th July 2016 for an MS90 offence (failing to give information as to the identity of the driver) on 16th December 2015. This conviction was recorded on the day immediately following the application for a licence, The driver having been fined £440 plus with costs, together with the endorsement of 6 penalty points upon his licence.

This penalty means the Driver does not meet para 2, of the Council's Standards for Drivers, namely

“No convictions or fixed penalty notices endorsed on a driver’s licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence.”

Furthermore, the Council’s standard renewal application form, completed by the Driver on 26th July 2016 contains the following question:-

“Have you in the last year been convicted of, or cautioned for, any offence (including motoring offences), been issued with a fixed penalty notice, or is there a prosecution pending against you?”

To which, the Driver replied, “No”.

It is an offence under S57(3) Local Government (Miscellaneous Provisions) Act 1976 for a person “knowingly or recklessly” to make a false statement or omit any material particular when applying for a licence. It carries a fine of up to £1000 upon conviction. A decision regarding prosecution has not been made but this Committee has been mindful of this matter in arriving at its decision; however, the concealment of the pending conviction could of itself be grounds for this Committee to conclude that the Driver is not a fit and proper person to hold a licence.

The Driver attended for interview under caution on 30th November 2016 in order to discuss this matter. It was immediately apparent that he did not understand the caution and so the interview had to be abandoned. He appeared before us today accompanied by his friend, who initially acted as interpreter but was then authorised by the Driver to represent him.

We are further mindful that Licensing Standard 13 requires

“..a reasonable standard of the English language sufficient to enable the driver to perform the functions of a hackney carriage/private hire driver”

The fact that the Driver does not have sufficient comprehension of English to understand the proceedings on 30th November, coupled with the fact that he should have known a DVLA check would be made gives us some concern.

Having heard on behalf of the Driver from his friend, who, we repeat, was specifically authorised by the Driver to speak on his behalf, this is not a case in which we should depart from our policy regarding a three year waiting period for the grant of a Private Hire/Hackney Carriage licence following a six penalty point endorsement on his licence. We also have concerns regarding the making of a false statement and the fact that he does not have sufficient command of the English language to understand the terms of the caution or the proceedings this morning. Accordingly we must refuse this application for a joint Private Hire/Hackney Carriage licence under S51(1)(a) Local Government (Miscellaneous Provisions) Act 1976 as we are not persuaded that the Driver is a fit and proper person to hold such a licence.

The Driver has a right of appeal to a Magistrates Court against this decision and he will be receiving a letter explaining the procedure.

LIC46

#### **DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENCE**

Members considered a report in relation to agenda item 4.

The Chairman welcomed the Driver and his legal advisor. He introduced all Members and officers and then explained the process.

The Licensing Officer presented a report asking Members to consider an suspension or revocation of a private hire/hackney carriage driver's licence.

The report set out details of a conviction for a speeding offence on 24 February 2016 in relation to exceeding a variable speed limit, where the limit was shown as 40mph, and the Driver had increased his speed along with the general flow of traffic around him. The Driver had, in accordance with the conditions attached to his licence, informed the licensing department in writing that he had received a notice of intended prosecution. The Driver had explained in his email that he had held a licence with this Council for almost 13 years, and that his licence had always been clear of penalty points for almost all of this time.



The Driver confirmed he had no questions for the Licensing Officer. In response to a Member question, he said his recorded speed during the 40mph variable limit had been 61mph.

The Driver made a statement. He said as stated in the report, he had been returning from Heathrow with no passengers in free-flowing traffic. Ahead of him was a sign for the return to the national speed limit, and along with the rest of the traffic he had increased his speed a little early. The circumstances were not dangerous.

The Driver's legal advisor said he had known the Driver for five years. He had wished to attend the Committee on behalf of the Driver today to affirm that he had an exceptional record throughout his 13 years of driving under licence from this authority, he had driven 700,000 miles, and carried out 16,800 jobs without incident. He had had only one no-fault accident, and had not had a single accident of fault, nor a single complaint. He took care at the wheel. His average gross income was £28,000, and any suspension or revocation would have a great impact. He was an exceptional driver, an asset to his operator and to the people he carried for this authority. He was a fit and proper person.

There were no member questions.

The Driver said he believed he had driven conscientiously, and that he was a safe driver, and that this was a one-off incidence which he regretted.

The Committee withdrew at 11.35am to determine the licence.

The Committee returned at 11.45am to give its decision.

## DECISION

The application before the Panel today is for the revocation of the Driver's joint private hire/hackney carriage licence in accordance with S61 (1) (b) Local Government (Miscellaneous Provisions) Act 1976.- any other reasonable cause.

On 9th March 2016 the Driver informed the Council that he had received a Notice of Intended Prosecution from Herts Police in respect of an alleged offence of speeding taking place on the 24th February 2016. On 12th December, 2016, the Driver informed the Council that his licence had been endorsed with six penalty points in respect of the offence. He was advised that since his licence had been endorsed with six points in respect of a single offence he no longer met UDC's Licensing Standards for drivers. Appendix A, para 2 of the Council's Policy states that:-

“No convictions or fixed penalty notices endorsed on a driver’s licence within the last 3 years where 6 or more points have been endorsed in respect of a single offence”

The Driver supplied the Council with further information regarding the offence by email. The circumstances of the offence were that he had been travelling on the M25 in good conditions when he approached an overhead gantry signifying the national speed limit, and though he was simultaneously passing a sign giving a limit of 40. He increased his speed in common with other road users, but nevertheless was caught on camera. He accepted the offence and entered a guilty plea by post.

The Driver has a 13 year history of driving for UDC and has always worked from the Airport. The loss of his licence would mean the loss of his livelihood. Having heard from him , and from Mr Mahoney of 24x7 , and taking into account his history within Uttlesford and the consequences to him of the loss of his licence, the Committee feels justified in making an exception to paragraph 2 of Appendix A of the Council’s Standards for Drivers. The decision of the Committee is that this application for revocation will be dismissed, and the Driver can continue to be licensed to drive in Uttlesford.

The meeting ended at 11.45am.