

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at ZOOM,
on TUESDAY, 20 APRIL 2021 at 11.00 am**

Present: Councillor P Lavelle (Chair)
Councillors C Day and P Lees

Officers in attendance: C Edwards (Democratic Services Officer), S Mahoney (Senior Licensing and Compliance Officer), E Smith (Interim Legal Services Manager) and L Sullivan (Licensing Support Officer)

Also present: The applicant in relation to agenda item 5.

LIC26 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC27 EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under section 1001 of the Local Government Act 1972, the public be excluded for the following items of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part1 of Schedule 12A of the Act.

LIC28 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVERS LICENCE

The Licensing Support Officer gave a summary of the report.

The applicant had applied to the Council for a Private Hire/Hackney Carriage Driver's renewal licence on 25 February 2021 to work for his own company; he had held an Operator's licence with UDC for one year.

On the application form in answer to question 4 'Do you have any endorsements on your DVLA licence?' the applicant had answered and declared that on 24 January 2019 he had received 3 points for 3 separate SP30 offences, (4 November 2018, 2 November 2019, 12 January 2020). He stated that he had no passengers in his vehicle for the two earlier occasions. The applicant had not established if he had passengers in his vehicle for the most recent offence.

The applicant had undertaken a taxi driving assessment on 25 November 2019 when he had a total of 6 points on his DVLA licence but had then a year later on received another 3 points on his DVLA licence.

The applicant came before members for them to determine whether he was a 'fit and proper' person to hold a licence as he had not met the Council's licensing standards.

In response to a question from the Chair, the Licensing Support Officer confirmed that the applicant had completed the driver licence application form.

The applicant said he could not understand why he had not reported the points to the Council; he apologised and said that for the January 2020 conviction he had not had notification until May 2020. He explained that the points were received in the very early morning and had been in areas where the speed limit had just reduced from 40mph to 30mph and on one of the occasions at the Dartford Tunnel the speed limit had reduced from 70mph to 60mph and then 50mph.

In response to a question from Councillor Day the applicant said that he had not reported the penalty points to his insurance company until the renewal date. On both the earlier occasions, he said that his employer, Barnston Luxury Travel, had been notified of the points and he had presumed that they would have informed their insurance company.

In response to a question from the Chair the applicant confirmed that the date on page 2 was incorrect and that both conviction and offence dates were the same, 12 January 2020.

Further to another query from the Chair, the applicant explained that he had taken the Uttlesford District Council (UDC) test early as he had been informed by an Officer to do so, but when he had taken his papers into the Licensing team he had been told that the test was not required. He had subsequently been told that the first Officer he had spoken to had been a temporary member of staff and had given incorrect information. He had taken another test on the 14 April 2021, as soon as lockdown had lifted.

In response to further questions from Councillor Day the applicant confirmed he had held a driving licence for 50 years. He now had his own private car and had not reported the penalty points to his private insurer.

The applicant finally asked the Panel to be sympathetic to his circumstances; he had invested in his own car just before the start of the pandemic.

The Chair explained that the Panel would retire to consider the case and would notify the applicant of their decision within 5 working days.

The applicant left the meeting at 11.28am and the Committee retired to make its decision.

DECISION NOTICE

The application before the Panel today is for the renewal of the applicant's joint hackney carriage/PHV driver's licence. He is a self employed owner-operator. We are hearing this case remotely.

We have had the opportunity of reading the Officer's report in this case, a copy of which has been served on the applicant, and we have also seen, as has he, the background documents annexed thereto including the application form and the DVLA documentation supporting the application.

We have also taken into account national and the Council's policy and have heard from the Case Officer. By way of update, we have also been told that the applicant has now taken and passed the Council's driving proficiency test, and that he had written into the Licensing Department prior to today's hearing enclosing correspondence showing the DVLA had been tardy in serving him with a notice of intended prosecution in respect of the 2020 offence.

On his application form, in answer to question 4 'Do you have any endorsements on your DVLA licence?' The applicant declared that he had accrued a total of nine penalty points accumulating at a rate of three points per year, in each case for minor offences occurring on 4.11.18 (SP50), 2.11.19(SP30) and 12.1.20(SP30).

He explained that in no case was he substantially outside of the 10% "margin of appreciation" but has not been able to establish whether or not he was carrying passengers in his vehicle. He had undertaken a speed awareness course following a similar offence on 15.6.18, of which he did inform the Council, and therefore administrative diversion was not available for three years. We were also informed of the November 2018 points but not until 24.1.19, but were not notified of either the 2019 or 2020 awards.

We note condition 19 of the Council's driver conditions requires that drivers "Notify UDC in writing of:-.....d) Any convictions, cautions or fixed penalty notices (save for in respect of civil parking fixed penalty notices which cannot result in the endorsement of points upon the drivers licence) within 7 days of the date of conviction, caution or the issue of a fixed penalty notice." More importantly, the applicant does not meet the requirements of the Council's suitability policy in a number of respects.

Our starting point is clause 2.5 which states "generally, where a person has more than one conviction, this will raise serious questions about their safety and suitability. The licensing authority is looking for safe and suitable individuals, and once a pattern or trend of repeated offending is apparent, a licence will not be granted or renewed." In this case we note what appears to be almost an annual occurrence.

Clause 2.23 provides licence holders who have accumulated 9 or more points on their DVLA drivers' licence are required to pass the Council approved driving test. If this is not done within 6 calendar weeks of the points being imposed then the taxi drivers' licence will be suspended until the driver has successfully undertaken the test. Such testing will be at the licence holders' expense."

The applicant was clearly aware of this requirement since he telephoned the Council. He alleges he was told he would receive a call back but never did, and enquiries reveal that he had taken the driving assessment of his own volition on 25.11.19, at a time when he only held 6 points. He explained that he was – erroneously – advised by a temporary member of staff in the Licensing Department that he was required to undertake this as a condition of an Operators Licence but was subsequently told this advice was wrong and we therefore take no further notice of this.

He did not take a course within the prescribed time frame, namely within 6 weeks of accumulating 9 points due to lockdown, but has since done so, and is now compliant with the Council's policy. Further, on renewal clause 2.28 applies, stating:- "A minor traffic or vehicle related offence is one which does not involve loss of life, driving under the influence of drink or drugs, driving whilst using a mobile phone, and has not resulted in injury to any person or damage to any property (including vehicles). Where an applicant has 7 or more points on their DVLA licence for minor traffic or similar offences a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed or the date on which the number of points on the DVLA licence dropped below 7"

Finally, the routine enhanced DBS certificate submitted with the applicant's application revealed a number of historic convictions. One of these was a conviction on 21.7.1977 for two counts of robbery including a breach of suspended sentence dating back to 8.6.1976. This was not declared in his responses to questions 6 and 7 on the application form. He explained to us that these convictions had necessitated an appearance before Committee on the grant of his initial licence but since then policy has changed and we therefore refer once more to clause 2.5 of our suitability policy; these historic convictions also show a pattern of offending, and it is these behaviour patterns, together with his want of candour, that bring him before us today.

We have listened carefully to what the applicant has told us and most of the things he told us have been set out in the body of this decision notice and we will not repeat them. After he had left the meeting he contacted his insurer and emailed the Licensing Department with their view, namely that they did not require notification of a fixed penalty notice at the date at which it was incurred, only upon renewal: the Council is not so relaxed and our policy is clear – notification is required within seven days.

The primary function of this Committee is the protection of the public and if we are in any doubt as to whether an applicant is a safe and suitable person to hold a licence then our duty is clear – we should refuse the application.

However, we have heard from the applicant and though we note the patterns of offending we are prepared to give him one final chance. He has nine penalty points on his DVLA licence and if he offends again he will be disqualified from driving, and as a consequence any licences he held from UDC would be revoked administratively.

We do, however, note his contrition and the efforts he has made to rectify the lacunae in his application. However, he is “on probation” with us and needs to be more diligent in both his actual driving and in his attention to administrative matters. Accordingly, we are prepared to grant this application and the applicant will receive his paperwork from the Licensing Department in due course. However, we would urge him to be more careful in the future and do not expect to see him before us ever again.

The meeting ended at 11.45am.