

**LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 19 FEBRUARY 2024 at 1.00 pm**

Present: Councillor A Armstrong (Chair)  
Councillors G Driscoll (Vice-Chair) and J Moran

Officers in attendance: S Bartram (Licensing Support Officer), J Livermore (Senior Licensing and Compliance Officer), S Nemeth (Licensing Support Officer) and C Shanley-Grozavu (Democratic Services Officer)

Also Present: E Smith (Legal Advisor – Birketts)

**LIC42 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

**LIC43 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 part 1 of Schedule 12A of the Act.

**LIC44 DETERMINATION OF A NEW HOME TO SCHOOL DRIVER LICENCE**

The Licensing Support Officer advised the Panel that the Driver for Agenda Item 3 was not in attendance. She confirmed that they had been given notice of the meeting, as well as a copy of the Agenda Pack, but she did not receive any response until the morning of the hearing when the Driver requested a further deferral due to a hospital appointment. The Driver also claimed to have not received the paperwork for the meeting.

The Legal Advisor clarified that the Driver had already received one deferment, in line with counsel custom, and it was for the Panel to now decide whether to determine the application or to offer an additional deferment.

Members emphasised the importance of the hearing date, especially after the Driver had been given a deferment six months prior due to non-attendance. They expressed disappointment in the lack of contact from the Driver with Licensing Officers and they indicated that they were minded to make a decision in their absence.

Members voted to dismiss the case.

## DECISION NOTICE

The matter before the Panel today is an application for a new Home to School driver's licence. If successful the Driver has an offer of engagement. The hearing of this application has been deferred from October 2023 to enable him to attend.

The Driver did not attend for us this afternoon. The Licensing Officer advised us that a telephone call had been received today saying that he had a hospital appointment. She outlined the lack of communication with the Council since September 2023. We are satisfied that the Driver knew of today's hearing and chose not to engage with the licensing process.

Accordingly we dismiss his application for non-attendance. We have not considered the merits of the application.

LIC45

## **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Licensing Support Officer presented their report which requested members to determine an application for a Private Hire Drivers Licence.

In response to questions from the Panel, officers clarified the date of conviction for the offenses outlined in the report.

The Driver addressed the Panel and said that the offenses in question were a mistake as a result of mixing in the wrong crowd when they were younger and that they hugely regretted it. They had been working in a public-facing role as a barber and was now looking for a fresh start. They already had an offer of employment and had passed all the necessary checks and exams.

In response to questions from the Panel, the Driver clarified the following:

- They had been convicted of the offenses in their early 20s. Whilst they could not change the past, they were working to be a better person.
- They had been employed as a barber for 16 years which had a lot of transferable skills to becoming a taxi driver.
- They had an offer of employment from an Uttlesford operator, however, would be based in Chelmsford. Officers clarified that this was permissible under law.

*The meeting was adjourned between 13:27 and 13:41.*

## DECISION NOTICE

The matter before the Panel today is an application for a new PHV drivers licence. If successful the Driver has an offer of engagement.

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

DBS documentation supporting the application. We have also taken into account legislation, national and Institute of Licensing Guidelines, and the Council's own licensing policy, and have heard from the Case Officer and from the Driver.

Put simply, the Driver's enhanced DBS check submitted to Uttlesford District Council Licensing Department showed that he had one serious conviction.

We are charged with determining whether the Driver is considered 'fit and proper' to hold an Uttlesford licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

*(i) That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

*(i) Been convicted of an offence involving dishonesty, indecency or violence: or*

*(ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.

Para 4.39 deals with motoring convictions and states:

*“Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government's mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of the doubt. If the Sub-Committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”*

Further, para 1.3 of this Council's Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

In reaching our decision, we must also be mindful of the provisions of the Council's Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

More specifically, paragraphs 2.19 and 2.20 of the Council's Driver Suitability Policy provide as follows:

*"Where an applicant has any conviction for, or related to, the supply of drugs or possession with intent to supply or connected with possession with intent to supply, a licence will not be granted until at least 10 years have elapsed since the completion of any sentence imposed."*

*"Where an applicant has a conviction for the possession of drugs, or related to the possession of drugs, a licence will not be granted until at least 5 years have elapsed since the completion of any sentence imposed. In these circumstances, any applicant will also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs"*

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the Driver and we have also seen, as has he, the

background documents annexed thereto. We have read the reference supplied by his employer.

We are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving, that we must be satisfied on the balance of probabilities whether the Driver is a safe and suitable person to hold an Uttlesford licence, and, unlike in other forums, the applicant is not entitled to the benefit of any doubt. A history of drug abuse is regarded by this Council as being a very serious matter and even though these offences took place one related to the supply of a controlled drug. The sentence awarded reflected the seriousness with which the Court regarded the matter.

We have read all the papers before us with care and have listened to what the Driver has had to say. He told us that he was very young at the time and had been very silly. He had got in with a very bad crowd and deeply regrets what he did. He has never been in trouble since and at all material times he has been in work as a barber. He referred us to the testimonial included within our papers from his current employer and said he was really keen to change his career.

The primary function of this Committee is the protection of the travelling public. We take this responsibility very seriously. The legislation makes this clear as does the case law and all authority in the area. Our role is to determine whether or not a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application. However, we have carefully considered whether the Driver is a fit and proper person to hold an PHV driver's licence and after careful thought we have decided to give him a chance. We therefore grant this application and the Driver will receive his badge and paperwork from the Licensing Department in due course. We wish him well and hope he will not appear before this Committee again.

LIC46

#### **DETERMINATION OF A PRIVATE HIRE DRIVERS LICENCE**

The Senior Licensing and Compliance Officer presented the report which requested that members determine an application for a Private Hire Drivers Licence.

He confirmed that the Council's Licensing Policy stated that a licence would not be granted until at least 7 years has elapsed from the conviction, which would have made the Driver eligible for a licence in 2030. However, it was within the Panel's gift to depart from the policy, should they be minded to.

The Driver addressed the Panel and explained that they had received points on their DVLA Driver's Licence as a result of driving their friend's car. Both individuals had comprehensive insurance, which previously included cover to drive other vehicles, however the Driver was not aware of a change to the policy which no longer permitted this.

In response to questions from the Panel, the Driver clarified the following:

- At the time of the offense, the Driver was unaware that their insurance policy had changed to no longer cover them to drive other vehicles.
- The Driver always had full comprehensive insurance and had provided their screenshots of their policies to Licensing Officers. The Panel noted that the documents provided did not cover the time of the offence.

A friend of the Driver requested to address the Panel and said that they had known the Driver since childhood and that they were an honest person. The Driver had insurance for three years with the same company which allowed them to drive different vehicles. This cover changed in the third year, but the Driver had not checked. They currently worked delivering food orders, and wanted to become a taxi driver, as driving was something which they could do well.

In response to questions from the Panel, the Driver's friend clarified that the Driver had been working as a food delivery driver for around two years and made their deliveries on a bike.

*The meeting was adjourned between 14:15 and 14:22*

The matter before the Panel today is an application for a PHV driver's licence. If successful he has an offer of engagement. He appeared before us today accompanied by a friend who we allowed to address us on his behalf.

In response to Question 5 upon the form, which asks "*Do you have any endorsements on your DVLA licence?*" he ticked the box marked "Yes". He disclosed that he had six penalty points upon his licence for an IN10 offence. The incident in question took place in 2022.

We are charged with determining whether the Driver is considered 'fit and proper' to hold an Uttlesford licence.

We start with the law, namely Part II of the Local Government (Miscellaneous Provisions) Act 1976.

S 51 thereof states:

*51(1) Subject to the provisions of this Part of the Act, a district council shall, on the receipt of an application from any person for the grant to that person of a licence to drive private hire vehicles, grant to that person a driver's licence:*

*Provided that a district council shall not grant a licence*

*(a) Unless they are satisfied*

*(i) That the applicant is a fit and proper person to hold a driver's licence.*

S61 goes on to state:

*A district council may suspend or revoke a driver's licence for:*

*(a) That since the grant of the licence he has-*

*(i) Been convicted of an offence involving dishonesty, indecency or violence: or*

*(ii) Been convicted of an offence under or has failed to comply with the provisions of the Act of 1847 or of this part of the Act: or*

*(b) Any other reasonable cause.*

In the event of a licence application being refused an applicant has the right of appeal to a Magistrates Court.

The Council has adopted the Institute of Licensing's Guidance on determining the suitability of applicants in the hackney and private hire trades. This is considered to be a statement of best practice and is founded upon the premise that the aim of local authority licensing of the taxi and PHV trades is to protect the public.

Para 4.39 deals with motoring convictions and states:



*“Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. Any motoring conviction demonstrates a lack of professionalism and will be considered seriously. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the grant of a licence or may not result in action against an existing licence. Subsequent convictions reinforce the fact that the licensee does not take their professional responsibilities seriously and is therefore not a safe and suitable person to be granted or retain a licence.”*

This stance is supported within the Government’s mandatory Taxi and Private Hire Vehicle Standards, para 5.14 of which provides that:-

*“Licensing authorities have to make difficult decisions, but the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that an applicant or licensee should not be given the benefit of the doubt. If the Sub-Committee or delegated officer is only 50/50 as to whether the applicant or licensee is fit and proper, they should not hold a licence. The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction.”*

Further, para 1.3 of this Council’s Suitability policy is clear:

*“If a licence holder falls short of the fit and proper standard at any time the licence should be revoked or not renewed on application to do so”*

In reaching our decision, we must also be mindful of the provisions of the Council’s Suitability Policy, a copy of which is before us. It states that the overriding aim of any Licensing Authority when carrying out its functions relating to the licensing of Hackney or Private Hire Drivers, Vehicle Proprietors and Operators must be the protection of the public and others who use (or can be affected by) Hackney Carriage and Private Hire services.

We agree.

Appendix A is more specific, and we quote the relevant provisions here:

*2.2 It is important to recognise that once a licence has been granted, there is a continuing requirement on the part of the licensee to maintain their safety and suitability. The licensing authority has powers to take action against the holder of all types of licence (drivers, vehicle and operators) and it must be understood that any convictions or other actions on the part of the licensee which would have prevented them being granted a licence on initial application will lead to that licence being revoked.*

*2.7 These guidelines do not replace the duty of the licensing authority to refuse to grant a licence where they are not satisfied that the applicant or licensee is a fit and proper person....*

*2.9 A driver has direct responsibility for the safety of their passengers, direct responsibility for the safety of other road users and significant control over passengers who are in the vehicle. As those passengers may be alone, and may also be vulnerable, any previous convictions or unacceptable behaviour will weigh heavily against a licence being granted or retained.*

Furthermore, paragraph 2.29 of the Council's policy states as follows:-

*"A major traffic or vehicle related offence is one which is not covered above and also any offence which resulted in injury to any person or damage to any property (including vehicles). It also includes driving without insurance or any offence connected with motor insurance. Where an applicant has a conviction for a major traffic offence or similar offence, a licence will not be granted until at least **7 years** have elapsed since the completion of any sentence imposed"*

We have had the opportunity of reading the officer's report in this case, a copy of which has been served on the Driver and we have also seen, as has he, the background documents annexed thereto.

We are specifically reminded that the Rehabilitation of Offenders legislation does not apply to taxi and PHV driving, that we must be satisfied on the balance of probabilities whether the Driver is a safe and suitable person to hold an Uttlesford licence, and, unlike in other forums, the applicant is not entitled to the benefit of any doubt.

We have read all the papers before us with care and have listened to what the Driver and his friend had to say. The Driver explained that he had been driving a friend's car but that as it transpired neither his own insurance nor the friend's covered him to drive that particular vehicle. We then asked him about the two

insurance certificates contained within our bundle which he had provide to the Licensing Department. Both certificates were in respect of time periods before the date of the offence and had expired. The offence in question is an absolute one, in respect of which there can be no defence, only mitigation, but on the basis of the papers before us, the policy held by the Driver had expired and in any event did not cover him for driving any vehicle other than the one named on the face of the document. The Driver asserted he did have a current policy of insurance but did not produce this for our consideration.

His companion then addressed us. He explained that the Driver had been insured with the same company for three years but in the third year the policy conditions changed to exclude him from driving other vehicles, and that the Driver had not checked his documents and did not appreciate this. He went on to explain that the Driver was working delivering food. The insurance cover the Driver had did not cover this activity at all, but he was able to explain that he carried out this work on a bicycle.

However, the primary function of this Committee is the protection of the travelling public. We take this responsibility very seriously. The legislation makes this clear as does the case law and all authority in the area. Our role is to determine whether or not a person is a fit and proper person to hold a PHV licence, and if we consider that he is not, then our duty is clear – we should refuse the application.

We have carefully considered whether the Driver is a fit and proper person to hold an PHV driver's licence at all and sadly we have to conclude that he is not. We have to take insurance offences very seriously and the conviction is less than twelve months ago.

The Driver has a right of appeal to the Magistrates Court against this decision and this right must be exercised within 21 days of the date of our decision. He will receive a letter/email from the Licensing Department with a copy of our decision and explaining his appeal rights but we feel it right to warn him that the magistrates cannot grant a licence, all they may do is review the

reasonableness of our decision and they will do so in the light of the documents we have quoted above.

*Meeting ended 14:30*