

LICENSING PANEL HEARING, LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on TUESDAY 12 APRIL 2022 at 11:00am

Present: Councillor P Lavelle (Chair)
Councillors S Barker and M Caton

Officers in attendance: S Bartram (Licensing Support Officer), K James (Licensing and Support Officer), A Lindsell (Democratic Services Officer), S Mahoney (Senior Compliance and Licensing Officer) and E Smith (Solicitor)

Also present: The driver in relation to agenda item LIC43
The driver in relation to agenda item LIC44
Councillor G Driscoll (Observing)

LIC41 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC42 EXCLUSION OF THE PRESS AND PUBLIC

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.

LIC43 DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER'S LICENSE

The Panel and Officers present introduced themselves to the driver.

The Solicitor clarified that Councillor Driscoll was attending the meeting for training purposes and would not participate in the meeting.

The Licensing Support Officer gave a summary of her report which requested that Members determine whether the applicant is considered 'fit and proper' to be granted a Private Hire Driver licence with this Authority

The driver confirmed that she had not intentionally misled the council and had honestly thought that the convictions that occurred forty years ago were spent and irrelevant. She apologised to the Committee.

In response to questions from Members the driver confirmed:

- She has worked throughout her adult life, including forty years as a legal secretary.
- She did some irresponsible things when she was twenty years old which resulted in her spending four weeks in prison.
- She had subsequently put this period behind her and moved forward with her life, family and career.
- She confirmed that the driving she undertook was school contract work.
- She again apologised for her mistake and bad judgement.

The driver left the meeting at 11:11am and the meeting was adjourned; the Panel retired to make its decision.

The driver rejoined the meeting at 11:23am and the meeting reconvened.

The Chair read the driver the decision notice.

The driver left the meeting at 11:26am.

DECISION NOTICE

The matter before the Panel today is an application for the grant of a new HC/PHV driver's licence to the driver. If successful she has an offer of employment with Lucketts of Watford.

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 she, the background documents annexed thereto and we have had the opportunity of hearing from the Case Officer and from the driver.

Briefly, the enhanced DBS certificate submitted as part of the licence application discloses two historic convictions for shop theft in 1980 and 1981. These convictions are over forty years old, but unfortunately, the driver failed to declare this information on his application form. The Rehabilitation of Offenders regime does not apply to the licensing of HC/PHV drivers. Question 6 of the UDC

application form clearly asks “Do you have any spent convictions?” the box ticked is “No” (copy attached). We are entitled to take into account spent matters.

Clause 2.3 of the Council’s Driver Conditions policy states as follows:-

“Any dishonesty by any applicant or other person on the applicant’s behalf which is discovered to have occurred in any part of any application process (eg failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution”

We have heard from the Case Officer and from the driver. She told us that she did not intend to mislead the council and that that she genuinely believed the convictions to be spent. She told us that she had little recollection of the matters after forty years, that she was very sorry and that she did not realise that there were three convictions and not two. She apologised to the Panel.

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

We have heard what the driver has had to say, and we appreciate her position, She has consistently been employed in positions of trust and genuinely believed that she was a fully rehabilitated person. There are few occupations exempted from the regime and HC/PHV driving is one of them: she was extremely apologetic, deeply remorseful and we do not consider her to pose any risk to the public.

We are therefore prepared to grant her a licence but would urge her to read forms very carefully before signing them in future.

LIC44

DETERMINATION OF A PRIVATE HIRE/HACKNEY CARRIAGE DRIVER’S LICENSE

The Panel and Officers present introduced themselves to the driver.

The Licensing Support Officer gave a summary of her report which requested that Members determine whether the applicant is considered 'fit and proper' to be granted a Private Hire Driver licence with this Authority

The driver confirmed:

- The omission of the three penalty points on her driver application form was a genuine mistake and noted that when she received the fixed penalty she wasn't asked to surrender her license for the points to be added.
- She forgot to notify the District Council that she had received the three penalty points, partly due to the pressure she was under whilst supporting elderly parents who had Covid at the time.
- Driving was her sole income and she has had to borrow money during the period she has not been driving, awaiting the result of this hearing.
- She noted that her license would have been renewed if she had notified the District Council of the penalty points.
- She again apologised to the Panel.

In response to questions from Members the driver confirmed that she did not realise that she was being allocated penalty points alongside the fine, particularly as she did not have to send her license off for endorsement.

The driver left the meeting at 11:39am and the meeting was adjourned; the Panel retired to make its decision.

The driver rejoined the meeting at 12:08pm and the meeting reconvened.

The Chair read the driver the decision notice.

The driver left the meeting at 12:10pm.

DECISION NOTICE

The matter before the Panel today is an application for the renewal of the HC/PHV driver's licence held by the driver. She is employed by 24 x 7 Ltd as a Home to School Transport (HtST) driver.

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 she, the background documents annexed thereto and we have had the opportunity of hearing from the Case Officer and from the driver

Briefly, the documents submitted alongside the renewal application, a copy of which is before us, shows that the driver acquired 3 points on her DVLA licence for a TS10 on 30th April 2021. Unfortunately, she failed to declare this information on her application form. The Rehabilitation of Offenders regime does not apply to the licensing of HC/PHV drivers. Question 4 of the UDC application form clearly asks "Do you have any endorsements on your DVLA Licence" the box ticked is "No" (copy attached). The UDC application form also clearly states that "You must include all Driving Licence Endorsements within the last 7 years".

Clause 2.3 of the Council's Driver Conditions policy states as follows:-

"Any dishonesty by any applicant or other person on the applicant's behalf which is discovered to have occurred in any part of any application process (eg failure to declare convictions, false names or addresses, falsified references) will result in a licence being refused, or if already granted, revoked and may result in prosecution"

Furthermore Condition 19c of an Uttlesford HC/PHV drivers' licence clearly states the following:-

"Drivers will

Notify UDC in writing of...

c) Any convictions, cautions or fixed penalty notices within 7 days of the date of conviction, caution or the issue of a fixed penalty notice"

Taken together these requirements are clear and the only explanation the driver was able to offer the Licensing Department was that she had forgotten the point. A copy of her email to them is included in the papers before us.

We have heard from the Case Officer and from the driver. She explained that she had received a letter from the Court which she did not read properly: she just paid the fine and did not appreciate that she had also received penalty points and as a consequence did not notify the Council. She understands that she is before us because she did not notify us, and her existing licence expired on 28th February: she has not worked or earned for well over a month and has had to borrow money in order to live.

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

We have heard what the driver has had to say. She is not before us today because she has acquired three points on her DVLA licence, she is here because she did not tell us and that raises questions as to probity. We find it difficult to believe that she did not know that she had points on her driving licence though the requirement to submit a paper counterpart for physical endorsement is long since repealed, and we also note that she was under considerable personal stress at the time. We also note that she has not worked for some seven weeks and has incurred personal debts which will not doubt take her some time to repay. We have taken this into account.

If the driver were the holder of a current licence and was before us for a review, we would have been minded to deal with her by way of a period of suspension. Her failure to disclose the penalty points is a serious matter and could not have gone unsanctioned.

However, it has considerably delayed the issue of a new licence and the cost to her of this delay will in the circumstances of this case serve as a sanction: a suspension would have been for less than the seven weeks she has been prevented from driving and hence earning. We note her contrition and are

therefore prepared to renew her licence but would urge her to read the Council's conditions of licence, and do not expect ever to see her before us again.

The meeting concluded at 12:11pm.