

LICENSING PANEL HEARING held at COUNCIL CHAMBER - COUNCIL OFFICES, LONDON ROAD, SAFFRON WALDEN, CB11 4ER, on MONDAY, 9 JANUARY 2023 at 1.00 pm

Present: Councillor P Lavelle (Chair)
Councillors G Driscoll and R Freeman

Officers in attendance: A Chapman (Licensing Support Officer), S Mahoney (Senior Licensing and Compliance Officer), S Nemeth (Licensing Support Officer), C Shanley-Grozavu (Democratic Services Officer) and E Smith (Solicitor)

LIC32 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

There were no apologies for absence or declarations of interest.

LIC33 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.

LIC34 DETERMINATION OF A PRIVATE HIRE AND HACKNEY CARRIAGE DRIVERS LICENCE

The Licensing Support Officer gave a summary of her report which requested that Members determine whether the applicant was suitable to hold a Private Hire Driver's Licence.

The Licensing Support Officer confirmed that the applicant's previous licence revocations were declared on their application form.

The applicant addressed the Panel and explained that they were a taxi driver between 2003 and 2017 and, since the revocation of their licence, had been working as a delivery driver. They acknowledged that they had made a mistake.

In response to member questions, the applicant said that they had not applied for a taxi licence through Watford Borough Council, as there had been no work in the area after the introduction of companies such as Uber and Bolt from 2014. They had been advised by their prospective employer to apply for a license through Uttlesford District Council (UDC) as they had done when they were previously working for them as a driver for disabled children.

The applicant presented a clear drug and alcohol Screening Certificate to the Panel and requested that this be taken into their considerations.

A representative from the applicant's prospective employer then addressed the Panel. They highlighted that the applicant had an exemplary record when they

were previously employed by the company, and they hoped to reemploy them again to transport children with Special Educational Needs. They had advised the applicant to apply for a licence with UDC as this would be in alignment with their other drivers who were also licensed by the Council. They concluded by saying that they considered UDC to be the gold standard of Licensing.

Meeting adjourned at 13:12 for the Panel to retire to make their decision

The meeting was reconvened at 13:37.

DECISION NOTICE

The matter before the Panel today is an application for the grant of a fresh HC/PHV driver's licence. The applicant has previously held an Uttlesford licence which was revoked and if successful he has an offer of employment.

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. We have had the opportunity of hearing from the Case Officer, from the applicant and from the applicant's representative who spoke on his behalf. They also provided us with a clear drugs and alcohol screening certificate.

The applicant is known to the Council. In brief, they received a FORMAL WARNING for possession of cannabis. This does not constitute a conviction and therefore there is nothing regarding the matter on his DBS certificate. However, as a consequence of this his licence with Watford Borough Council was revoked by them, and thereafter his Uttlesford licence was revoked by committee with immediate effect for not declaring his revocation by Watford Borough Council.

He then applied to TfL for a Private Hire Licence, but they refused his application due to his previous revocations. He did not apply elsewhere for a Private Hire Licence for three and a half years but has now submitted a complete application to the Council for a new Private Hire Licence.

Whilst our suitability policy has no defining criteria for warnings, only convictions or cautions, and the policy has no timeline when an applicant can re-apply for a licence following revocation, we do regard substance abuse very seriously. We have heard from the case officer, from the applicant, and from the applicant's representative, and we have considered the Drug and Alcohol Screening Certificate with which we have been provided today.

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 he is not, then our duty is clear – we should refuse the application.

We have heard what the applicant and the applicant's representative have had to say, and we have listened carefully. We note that the incident concerned was five years ago and that the Police saw fit to deal with the matter via a warning.

However, the applicant did not report the actions of Watford Council to us within the short time span he was obliged to under the conditions of his licence. We regard this seriously, and of course substance abuse, be it alcohol or drugs, is also a matter of grave concern. We also note that if his application were successful he would be driving vulnerable children, and we repeat that the offence underlying all of this is one of misuse of drugs. Finally, we note the applicant is, and always has been since the revocation, been in work as a delivery driver.

We have considered all of this most carefully but sadly we do not consider the applicant to be a fit and proper person to hold an Uttlesford licence. He failed to disclose a licence revocation for drug abuse. We note what the applicant's representative has told us, but our function is the protection of the public and we do not consider the applicant to be a fit and proper person to drive vulnerable people. We therefore refuse this application.

The applicant has a right of appeal to the Magistrates Court against this sanction and this right must be exercised within 21 days of the date of our decision. The applicant will receive a letter/email from the Legal Department explaining this but he should be aware that since this is a refusal, and not a revocation, that the magistrates have no power to grant him a licence.

LIC35

DETERMINATION OF A PRIVATE HIRE AND HACKNEY CARRIAGE DRIVERS LICENCE

The Licensing Support Officer gave a summary of her report which requested that Members determine whether the applicant was suitable to hold a Private Hire Driver's Licence.

The applicant addressed the Panel and explained that they regretted their actions from eight years ago, but questioned the convictions included on the DBS form as nobody had been hurt. They said that when they were in court, the judge had given them the smallest possible fine.

They understood why their licence application had been brought before a Panel hearing, but felt that they were more than worthy of the drivers job which they had applied. They concluded by saying that they were not the person that the DBS made them out to be.

The Chair asked the applicant for further information regarding another caution on the DBS form. The applicant responded that they did not understand why the incident was on the DBS form, as the Crown Prosecution Service had dropped the case. The Solicitor clarified that a person would have received a caution if they had admitted to committing said crime, regardless of any further convictions being later pursued.

The applicant explained that the caution was as a result of an incident with a takeaway driver after they had nearly hit one of their family members; however, they had not gone out to intentionally harm anyone and nobody was hurt.

The Chair then requested further clarification on the applicant's most recent convictions. The applicant explained that this had been a result of a disagreement with the family of another pupil at his son's school, following the discovery of a quantity of cannabis in his son's possession. He confirmed that no action was ever taken by the police against the other pupil.

Meeting adjourned at 13:53 for the Panel to retire to make their decision.

The meeting was reconvened at 14:10

DECISION NOTICE

The matter before the Panel today is an application dated 6th December 2022 for the grant of a new HC/PHV driver's licence. If successful, he has an offer of employment.

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. We have had the opportunity of hearing from the Case Officer and from the applicant, and we have considered the terms of the Council's Licensing Policy. We remind ourselves that all applications are determined on their merits and we have discretion to depart from policy in appropriate circumstances.

On the DBS certificate attached to his application, he has two for Common Assault and Battery. He also has a caution for Assault Occasioning Actual Bodily Harm. The case officer had an informal conversation on the 8th December 2022 with the applicant to discuss these convictions.

In the course of that conversation the applicant explained that his son had been found with cannabis at school and he believed he was being exploited to sell this. Once he identified the other individual involved in the case, he went to visit him and his family where the situation got heated and the police were called.

As a consequence, the applicant does not meet the following requirements of the Council's Licensing Policy:

Point 2.9 states "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."

Point 2.10 further provides that "where an applicant has more than one conviction showing a pattern or tendency irrespective of time since the convictions, serious consideration will need to be given as to whether they are a safe and suitable person

Finally, point 2.14 states "Where an applicant has a conviction for an offence of violence, or connected with any offence of violence, a licence will not be granted

until at least 10 years have elapsed since the completion of any sentence imposed.'

We have heard from the applicant today and we have listened carefully. However, we are considering two offences of violence, albeit eight years apart. To receive a caution one must admit the offence and the offence for which the applicant was cautioned was one of violence. Similarly, though we accept the later incident was in support of his son, the proper course of action in all the circumstances would have been to make an appointment with the Headteacher: the offence with which he was subsequently charged was actual bodily harm, so someone was hurt, and he was also made subject to a restraining order. We regard violence of any kind very seriously indeed.

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 he is not, then our duty is clear – we should refuse the application. Sadly, in the applicant's case we feel that in all the circumstances we have no alternative but to do so. Violence is never acceptable and what the DBS certificate reveals is a true picture of the offences.

The applicant has a right of appeal to the Magistrates Court against this sanction and this right must be exercised within 21 days of the date of our decision. The applicant will receive a letter/email from the Legal Department explaining this but he should be aware that since this is a refusal, and not a revocation, that the magistrates have no power to grant him a licence.

The meeting ended at 14:14