

Cheltenham Borough Council

Licensing Committee – 6 December 2013

Application for a Private Hire Driver's Licence

Mr Keith David Lewis

Report of the Licensing Officer

1. Executive Summary and Recommendation

- 1.1 An application has been received from Mr Keith Lewis for a Private Hire Driver's Licence.
- 1.2 Mr Lewis has a number of convictions. The details of these are contained in the enclosed background papers.
- 1.3 In light of this Members of the Committee should be aware of the convictions because of:
 - 1.3.1 The nature of the offences; and
 - 1.3.2 The need to ensure that Mr Lewis is judged to be a fit and proper person to hold a Private Hire Driver's Licence.
- 1.4 **The Committee is recommended to resolve that Mr Lewis's application:**
 - 1.4.1 **be granted as Mr Lewis is a fit and proper person, or**
 - 1.4.2 **be refused on the grounds that Mr Lewis is deemed not to be a fit and proper person.**

1.5 Implications

- 1.5.1 Financial
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- 1.5.2 Legal
There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.
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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Private Hire Driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the

Licensee/Applicant and the risks to the safety and comfort of the public.

- 3.2 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern.

Violence

- 3.6 Drivers of hackney carriage and private hire vehicle are often entrusted with the care of children and young persons. (Cheltenham Borough Council's adopted policy - appendix K, para 3.1)
- 3.7 It is comparatively easy for an unscrupulous driver to take advantage of such vulnerable persons. (Para 3.2)
- 3.8 The Council seeks to minimise risks associated with children and young persons and for that reason a more serious view will be taken where offences of violence involve children or young persons. (Para 3.3)
- 3.9 Where the commission of an offence involved loss of life a licence will normally be refused. In other cases a period of 5 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will generally be required before an application is likely to be considered favourably. (Para 3.4)
- 3.10 In particular an application will normally be refused where the applicant has a conviction for an offence or similar offence(s), or offence(s) which replace the below offences:
- Murder
 - Manslaughter
 - Manslaughter or culpable homicide while driving
- (Para 3.5)
- 3.11 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 10 years prior to the date of application:
- Arson
 - Malicious wounding or grievous bodily harm (s.20 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(a) Crime and Disorder Act 1998)
 - Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s.29(1)(b) Crime and Disorder Act 1998)
 - Grievous bodily harm with intent (s.18 Offences Against the Person Act)

- Grievous bodily harm with intent (s.20 Offences Against the Person Act)
- Robbery
- Possession of firearm
- Riot
- Assault Police
- Common assault with racially aggravated (s.29(1)(c) Crime and Disorder Act 1998)
- Violent disorder
- Resisting arrest
(Para 3.7)

3.12 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 8 years prior to the date of application:

- Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1998)
- Racially-aggravated s.4 Public Order Act 1986 offence (fear of provocation of violence) (s.31(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress (s.31(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.2 Protection from Harassment Act 1997 offence (harassment) (s.32(1)(a) Crime and Disorder Act 1998)
- Racially-aggravated s.4 Protection from Harassment Act 1997 offence (putting people in fear of violence) (s.32(1)(b) Crime and Disorder Act 1998)
- Racially-aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31(1)(c) Crime and Disorder Act 1998)
- Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
(Para 3.8)

3.13 An application will also normally be refused where the applicant has a conviction for an offence or similar offence(s) or offence(s) which replace the below offences and the conviction is less than 5 years prior to the date of application:

Common assault

- Affray
- S5 Public Order Act 1986 offence (harassment, alarm or distress)
- S.4 Public Order Act 1986 offence (fear of provocation of violence)
- S4A Public Order Act 1986 offence (intentional harassment, alarm or distress)
- Obstruction
- Possession of offensive weapon
- Criminal damage

(Para 3.9)

4. Licensing Comments

- 4.1 Members are to refer to the enclosed background papers for a full list of convictions and an explanation of how the Council's Policy applies to each type of offence.
- 4.2 The Committee must seek to promote its own adopted policy and only deviate from it where there are strong and defensible reasons.
- 4.3 Members are to note that Mr Lewis conforms with the Council's Policy on the relevance of convictions because each of his convictions occurred a sufficient length of time in the past. However Members are also to note that, for Taxi and Private Hire drivers, convictions are never spent and Members should make their determination based on whether the evidence suggests Mr Lewis is a fit and proper person to hold such a licence.

- 4.4 Mr Lewis has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.5 The Committee must be satisfied that Mr Lewis is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

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