

Cheltenham Borough Council

Licensing Committee – 5 December 2014

Application for a Private Hire Driver's Licence

Report of the Licensing Officer

1. Executive Summary

1.1 An application has been received from Mr Giuseppe Maurizio Licata for a Private Hire driver's licence.

1.2 Mr Licata has convictions, the details of which 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 Licata 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:

1.4.1 Mr Licata's application for a Private Hire driver's licence be granted because the Committee is satisfied that he is a fit and proper person to hold such a licence, or

1.4.2 Mr Licata's application for a Private Hire driver's licence be refused as the Committee considers him not to be a fit and proper person to hold such a licence.

1.5. Implications

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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).

2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

The question for the committee is therefore whether, given the nature of the offence, the applicant is a fit and proper person to hold a licence.

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.
- 3.6 **Drunkness with a motor vehicle (disqualification)** - Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an applicant is considered for a licence.
- 3.7 **Drugs** - An application will normally be refused where the applicant has more than one conviction for offences related to the possession of drugs and the convictions are less than 5 years prior to the date of the application.
- 3.8 An application from an applicant who has an isolated conviction for an offence related to the possession of drugs within the last 3 years will require careful consideration of the facts.

4. Probity in Licensing

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.
- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
 - Be made on the individual merits of a case.
 - Have regard to all relevant national and local guidance.
 - Be made impartially and in good faith.
 - Be made by the body that receives all the relevant information and evidence.
 - Relate to the issue or question placed before the committee.

- Be based only on consideration of relevant and material matters.
- Be rational and reasoned.
- Be made in a way that does not give rise to public suspicion or mistrust.

- 4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.
- 4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Licensing Comments

- 5.1 Members should 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. Please note that cautions are applied after an admission of guilt and should, for decision-making purposes, be treated as though they were convictions.
- 5.2 The Committee must seek to promote its own adopted policy and only deviate from it where there are strong and defensible reasons.
- 5.3 Members may wish to note that Mr Licata was licensed as a Hackney Carriage driver until he surrendered his licence following a conviction in 2010. Since then he has applied on 3 occasions for a Hackney Carriage driver's licence – in 2011, 2012 and 2013 – and was refused on each occasion by the Licensing Committee, whose decision was that Mr Licata was not a fit and proper person to hold such a licence. The minutes of each of those minutes are attached to the background papers.
- 5.4 Members will note that less than 5 years has elapsed since the reinstatement of Mr Licata's DVLA licence following disqualification. The policy requirement in relation to such offences is that at least 5 years free from conviction should normally elapse from the date of the restoration of the DVLA licence before an application is considered. However Members will also note that at a previous Licensing Committee meeting, the Chair decided that in Mr Licata's case this period could be reduced from 5 years to 2 years. This is explained in further detail in the background papers. The Committee is not bound by that decision but Members should be aware of it.
- 5.5 With regards to the caution for a drug related offence, the policy states that an offence of this type within the last 3 years will require careful consideration of the facts. To that end Members should refer to the interview notes in the attached background papers where Mr Licata has provided an explanation.
- 5.6 Members should note that there are driving offences on Mr Licata's licence dated 2009 which resulted in penalty points. Those points have now expired but Members may still take into account those offences if they are deemed relevant.
- 5.7 Mr Licata 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.
- 5.8 The Committee must be satisfied that Mr Licata 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.

Minutes of the above-mentioned Licensing Committee meetings.

Officer's report refers to Cheltenham Borough Council's Policy, Guidance and Conditions for Private and Taxis, approved 15 July 2014

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