

Cheltenham Borough Council

Licensing Committee – 9 January 2015

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 MD Khairul Islam for a Private Hire driver's licence.
- 1.2 Mr Islam has passed all of the assessments required for the grant of a licence. However Mr Islam failed the approved road safety driving assessment on 4 occasions between July and October 2014. He passed the test with a satisfactory drive on the 5th attempt in November 2014, albeit with several comments from the driving assessor relating to improvements still required.
- 1.3 In light of this Members of the Committee should be aware of the facts because of:
- 1.3.1 The nature of the test failures; and
- 1.3.2 The need to ensure that Mr Islam 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 Islam'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 as he has passed all of the assessments required under the Council's current adopted policy; or**
- 1.4.2 **Mr Islam'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 due to the number of occasions on which he failed to pass the road safety driving assessment.**

1.5. Implications

- 1.5.1 **Financial** **Contact officer: Sarah Didcote**
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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 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.

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 breakdown of each of the driving assessments undertaken (4 failures and 1 pass) along with the driving assessor's comments relating to each. Members should note that whilst the 5th and final driving assessment was passed as "satisfactory", the assessor nevertheless made comments about deficiencies in the applicant's driving ability.

5.2 Mr Islam 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.

- 5.3 The Committee must be satisfied that Mr Islam is a fit and proper person before agreeing to the grant of a licence, bearing in mind that the overriding consideration for the Committee is the safety of the public. The Committee must be satisfied that licensed private hire and hackney carriage drivers are safe drivers with good driving records and adequate experience.
- 5.4 Members are advised that Mr Islam has held a full UK driving licence since February 2011 and has no driving convictions or endorsements on his DVLA licence.

Background Papers

Service records

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

Contact Officer

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