Report of the Director of Places

Agenda Item No: 5
Meeting: 17 July 2014

NORTH LINCOLNSHIRE COUNCIL

LICENSING (MISCELLANEOUS) SUB COMMITTEE

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976
TOWN POLICE CLAUSES ACT 1847

APPLICATION FOR A PRIVATE HIRE VEHICLE DRIVERS LICENCE

1. OBJECT AND KEY POINTS IN THIS REPORT

1.1 To inform the Sub-Committee of an application for a Private Hire Vehicle Drivers licence.

1.2 To request that the Sub-Committee determines whether to grant, refuse or restrict the application for a Private Hire Vehicle Drivers licence in regard to Mr Thomas Bright Roulston**.**

2. BACKGROUND INFORMATION

2.1 Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 states that the Council shall not grant a Private Hire Vehicle Drivers Licence unless they are satisfied that the applicant is a fit and proper person. Likewise, section 59 of the same Act states that the council shall not grant a Hackney Carriage Vehicle Drivers Licence unless they are satisfied that the applicant is a fit and proper person.

2.2 The Licensing (Miscellaneous) Sub-Committee is authorised to determine applications for the grant, transfer, renewal or revocation of Hackney Carriage/Private Hire Licences relating to drivers, operators and vehicles.

2.3 An application for of a Private Hire Vehicle (PHV) Drivers Licence has been received along with their DVLA Driving Licence from Mr Roulston**.**

2.4 Drivers of Hackney Carriages and Private Hire Vehicles must be in possession of a valid Hackney Carriage or Private Hire Vehicle Drivers Licence, depending which vehicle they wish to drive. On initial application, prior to the grant of a licence, and upon application to renew a licence a check is made with the Disclosure and Barring Service for a disclosure of the applicant's criminal history.

2.5 Information may also be received from the police in regard to current Hackney Carriage/Private Hire Vehicle Drivers who have been found guilty of an offence by the courts.

2.6 Applicants are required to submit their original DVLA driving licence with all applications.

2.7 On receipt of Mr Roulston's Disclosure there showed a trace. A Board of 3 Licensing Officers having regard to all the facts, consider that the application of Mr Roulston be determined by the Licensing (Miscellaneous) Sub-Committee, to ascertain if he is a fit and proper person in accordance with the Local Government (Miscellaneous Provisions) Act 1976.

2.8 The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and Amendments Order 2002, exempts applicants for HC/PHV Driving Licences from the Rehabilitation of Offenders Act 1974, and therefore all relevant convictions can be considered.

2.9 Information disclosed on the applicant's DBS check will be presented at the meeting as the said information cannot be reproduced. Reports will be updated at the meeting if necessary to take account of any additional relevant information received after publication.

2.10 Members should not allow themselves to pre-determine the application or to be prejudiced in favour of or opposed to the application until they have had an opportunity to consider all the pertinent facts.

2.11 Members should be aware that as they are acting in a quasi-judicial role as regards this licensing matter, they should remain in the room so that they hear all the evidence on which the decision will be based.

3. OPTIONS FOR CONSIDERATION

3.1 The options available to the Licensing (Miscellaneous) Sub-Committee under the Local Government (Miscellaneous Provisions) Act 1976 when considering such applications are as follows:

Option 1 – To grant the licence as applied for with no additional conditions or restrictions other than those normally applied to such licences.

Option 2 – To grant the licence subject to additional conditions or restrictions.

Option 3 – To refuse to grant the licence.

4. ANALYSIS OF OPTIONS

4.1 Option 1 – A criminal record does not debar an applicant from gaining or renewing a licence unless the authority considers the said conviction(s) render the person unsuitable and therefore not a fit and proper person. In the first instance criminal records are checked against guidelines in respect of the Rehabilitation of Offenders Act 1974 and guidance produced in line with the Department of Transport Circular 2/92 and Home Office Circular 13/92. A Copy of the guidance is attached for Members information as **Appendix A.**

4.2 Option 2 – The legislation also allows the Licensing Authority to attach Conditions to a Private Hire Vehicle Drivers Licence and in the event that the licensed driver has breached any of the Conditions during the period of their licence may result in them being put before an Assessment Board of Officers of the Licensing Division to consider it. In the event that the Assessment Board is not satisfied that the applicant is a "fit and proper" person, a recommendation is made to this Sub-Committee to determine the licence or the renewal application. The committee could also determine to issue the licence for a lesser period. Licences can be issued for a period up to a maximum of three years.

4.3 Option 3 – Should the Licensing (Miscellaneous) Sub-Committee refuse the application or impose additional terms, conditions or restrictions then the applicant may appeal to a Magistrates Court within 21 days from the date on which he was notified of the decision. Should the Magistrates uphold the decision of the council, the applicant has further recourse to the Crown Court.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

5.1 There are no resource implications.

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

6.1 Local Government (Miscellaneous Provisions) Act 1976.
6.2 Town Police Clauses Act 1847.

7. OUTCOMES OF CONSULTATION

7.1 Not applicable.

8. RECOMMENDATIONS

8.1 That the application be determined in accordance with the options outlined at paragraph 3 above, taking into account the information received.

DIRECTOR OF PLACES

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Background Papers used in the preparation of this report: -
Application file- except information protected by the Data Protection Act.

APPENDIX A

NORTH LINCOLNSHIRE COUNCIL

GUIDANCE TO MEMBERS OF THE

LICENSING (MISCELLANEOUS) SUB-COMMITTEE

IN RESPECT OF PREVIOUS CONVICTIONS RELATING TO

Applications for Hackney Carriage & Private Hire Vehicle Drivers' Licences

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1.0 Introduction

1.1 This guidance is based on the Department of Transport Circular 2/92 and the Home Office Circular 13/92, taking into account the amendment to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 in March 2002 to include drivers of Hackney Carriages and Private Hire Vehicles and the Bichard Enquiry regarding the disclosure of non conviction information on Criminal Record Disclosures.

1.2 The purpose of the guidance is to assist members and officers to determine the fitness of an applicant to hold a Hackney Carriage/Private Hire Vehicle Drivers' Licence under the Local Government (Miscellaneous Provisions) Act 1976.

2.0 Background

2.1 North Lincolnshire Council is a registered body with the Criminal Records Bureau.

2.2 It uses the Criminal Records Bureau (CRB) disclosure service to assess an individual's suitability to drive a Hackney Carriage / Private Hire Vehicle.

2.3 The main objective is to establish whether a person is a 'fit and proper person' under the Local Government (Miscellaneous Provisions) Act 1976.

2.4 It also enables the local authority to attach any conditions to the licence, which it feels are necessary to protect members of the public.

3.0 Scope of Legislation

3.1 The Rehabilitation of Offenders Act was introduced in 1974 to help restore the reputation of persons who have been convicted of an offence but have since stayed on the right side of the law. In normal circumstances, if someone is sentenced to 30 months or less in prison, the conviction will become 'spent' after 10 years, beginning with the date of sentence, and would no longer need to be disclosed when applying for employment.

However, applicants for certain posts, including Hackney Carriage and Private Hire Drivers, will always be required to disclose all their previous convictions, regardless of whether or not they would normally be regarded as 'spent', and all relevant convictions can therefore be considered.

3.2 The Bichard Enquiry came following the Home Secretary announcement on the 18th December 2007 for the launch of an independent inquiry into the manner in which the police had handled intelligence about Ian Huntley's past and about the vetting processes which ultimately led to his employment in a local school.

3.3 Sir Michael Bichard, Rector of the London Institute and a former Permanent Secretary at the Department for Education and Employment, was appointed as Chairman of the inquiry.

3.4 Sir Michael Bichard looked into the events surrounding the Soham Murders of 2002 and in particular what was previously known about the murderer Ian Huntley. The concern existed that professionals in Humberside were aware that Huntley had a history of sexual relationships with girls under the age of sixteen. However, this information did not appear to have been readily available and as a consequence when the school where Huntley was subsequently employed carried out its statutory checks on him nothing untoward came to light. Bichard made a number of recommendations, some of which effects the information which is now disclosed on the Criminal Records Disclosures, that may not have appeared before.

3.5 On initial application for a licence, and upon application to renew a licence every 3 years, a request is made to the Criminal Records Bureau for a disclosure of any criminal record held in the name of the applicant prior to the grant of a licence

3.6 An Enhanced Disclosure is requested, which contains the same details as a Standard Disclosure but may also contain non-conviction information from local police records, which a chief police officer thinks may be relevant in connection with the matter in question.

3.7 It is also a requirement that the applicant must submit their DVLA driving licence for both new and renewal applications failure to do so will result in the application being incomplete.

3.8 A further Criminal Records Bureau check can be requested by the Licensing Division at any time during a licence where there is reason to believe that the licence holder has been convicted of a further offence. Information may be received from many different sources such as, the public, trade, police or even in the local press regarding current Hackney Carriage/Private Hire Vehicle Driver's who have been convicted of an offence.

4.0 Determination of Relevant Information / Convictions, by Board of Officers

4.1 As previously stated, applicants for Hackney Carriage & Private Hire Vehicle Drivers are exempt from the Rehabilitation of Offenders Act 1974, and therefore all relevant convictions can be considered.

4.2 The legislation also allows the Licensing Authority to consider comments received by the police relating to Hackney Carriage/Private Hire Vehicle Drivers, in situations where a conviction may or may not have been obtained. As all applicants or licensed Hackney Carriage/Private Hire Vehicle Driver's has the right to a fair and proper hearing, the members, in these circumstances, will have the opportunity to put questions to the applicant and the police and clarify any issues raised in the criminal records bureau disclosure made by the police, at the Sub-Committee.

4.3 Where a Criminal Records Bureau Disclosure, for the review of a driver's licence is positive or is accompanied by any relevant police comments, an Assessment Board of Officers of the Licensing Division considers the nature of any offences or information provided by the Chief Police Officer, the date of the event, the age of the applicant and any other relevant factors. In the event that the Assessment Board is not satisfied that the applicant is a "fit and proper" person, a

recommendation is made to this Sub-Committee to determine the application.

4.4 On receipt of the application, disclosure and DVLA driving licence, the Licensing officer will check the details. If convictions are disclosed and/or offences displayed on the driving licence, an Assessment Board, comprising a further three licensing officers, will be convened.

4.5 The Assessment Board will consider: -

- Whether the conviction or other matters revealed are relevant to the application in question,
- The seriousness of any offence or other matter revealed,
- The length of time since the offence or other matter occurred,
- Whether the disclosure reveals a pattern of behaviour,
- Whether the applicant's circumstances have changed since the offending behaviour or the other relevant matters, and
- The circumstances surrounding the offence and the explanation(s) offered by the convicted person.

5.0 Determination of Application where Convictions / Endorsements are disclosed

5.1 If the matters revealed are deemed relevant, the Assessment Board will refer the matter to the Licensing (Miscellaneous) Sub Committee for determination. Certain types of offences will always be referred.

5.2 The following examples afford a general guide on the action to be taken where convictions are admitted.

a) Minor traffic offences

Convictions for minor traffic offences, e.g. obstruction, waiting in a restricted street, speeding etc, should not prevent a person from proceeding with an application.

If sufficient points have been accrued to require a period of disqualification of the applicant's driving licence, members should ask to the reason why the points have accrued, and note whether there is a pattern, for example of excessive speed.

b) Major traffic offences

An isolated conviction for reckless driving or driving without due care and attention etc, should normally merit a warning as to future driving and advice on the standard expected of Hackney Carriage and Private Hire Vehicle Drivers. Clarification should be sort as to the reason for the conviction and circumstances at the time of the offence should be taken into account. More than one conviction for this type of offence within the last two years should merit refusal and no further application should be considered until a period of 1 to 3 years free from convictions has elapsed.

c) Drunkenness

i. *With motor vehicle*. A serious view should be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. An isolated incident should not necessarily debar an applicant but strict warnings should be given as to future behaviour. More than one conviction for these offences should raise grave doubts as to the applicant's fitness to hold a licence. At least 3 years should elapse (after the restoration of the driving licence) before an applicant is considered for a licence. If there is any suggestion that the applicant is an alcoholic, a special medical examination should be arranged before the applicant is entertained. If the applicant is found to be an alcoholic a period of 5 years should elapse after treatment is complete before a further licence application is considered.

ii. *Not in motor vehicle.* An isolated conviction for drunkenness need not debar an applicant from gaining a licence. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination (see (i) above). In some cases, a warning may be sufficient.

d) Drugs

An applicant with a conviction for a drug related offence should be required to show a period of at least 3 years free of convictions before an application is entertained, or 5 years after detoxification treatment if he/she was an addict.

e) Indecency/Sexual Offences

As Hackney Carriage and Private Hire Vehicle Drivers often carry unaccompanied passengers, applicants with convictions for a sexual offence, indecent exposure, indecent assault, or importuning, should be refused until they can show a substantial period free of such offences.

If more than one conviction of this kind or under circumstances where a serious crime of indecency or of a sexual nature has been committed, the Sub-Committee should give serious consideration as to whether or not a licence should be granted.

f) Violence

As Hackney Carriage and Private Hire Vehicle Drivers maintain close contact with the public, a firm line should be taken with applicants who have convictions for grievous bodily harm, wounding or assault. At least 3 years free of such convictions should be shown before an application is entertained and even then a strict warning should be administered.

If someone has re-offended or has committed a serious offence of violence consideration should be given as to whether or not a licence should be granted.

g) Dishonesty

Hackney Carriage and Private Hire Vehicle Drivers are expected to be persons of trust. The widespread practice of delivering unaccompanied property is indicative of the trust that business people place in drivers. Moreover, it is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare etc. Overseas visitors can be confused by the change in currency and become "fair game" for an unscrupulous driver. For these reasons a serious view should be taken of any conviction involving dishonesty and note whether there is a pattern. In general, a period of 3 to 5 years free of conviction should be required before entertaining an application.

6.0 Determination of Application where Non Conviction Information has been disclosed by the Police

6.1 There is no judicially approved test of fitness and propriety and, accordingly, a number of local tests have developed. These tend to be based on a test similar to the following:

'Would you (as a member of the licensing committee or other person charged with the ability to grant a hackney carriage driver's licence) allow your son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person from whom you care, to get into a vehicle with this person alone?'

6.2 If the answer to this question (or a similar test) is an unqualified 'Yes', then the test is probably satisfied. If there are any doubts in the minds of those who make the decision, then further consideration should be given as to whether this person is a fit and proper person to hold a hackney carriage/private hire driver's licence.

6.3 Mr Justice Silber made an obiter observation in the case of *Leeds City Council v Hussain.* In the context of suspension of a drivers licence "for any other reasonable casue" he said:

'…the purpose of the power of suspension is to protect users of licensed vehicles and those who are driven by them and members of the public. Its purpose, therfore, is to prevent licenses being given to or used by those who are not suitable people taking into account their driving record, their driving experience, their sobriety, mental and physical fitness, honesty, and that they are people who would not take advantage of their employment to abuse or assault passengers.'

6.4 This test would support the test for fitness and propriety.

7.0 General

7.1 It is important to stress that the above examples constitute guidance only and that each case must be decided on its own merits.

7.2 A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but, generally speaking, the applicant will be expected to remain free of conviction for a period of 3 to 5 years, depending on the type of offence and the circumstances, before a licence is determined. Consideration should be given as to whether or not the offence is isolated and whether there are mitigating circumstances.

7.3 The overriding consideration should be the protection of the public.