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29 January 2019

To: All Councillors

As a Member or Substitute of the **Licensing & Appeals Sub-Committee**, please treat this as your summons to attend a meeting on **Wednesday 06 February 2019 at 10.00am in the Committee Room, Town Hall, Matlock DE4 3NN.**

Yours sincerely



Sandra Lamb
Head of Corporate Services

AGENDA

1. APOLOGIES/SUBSTITUTES

Please advise Democratic Services on 01629 761133 or e-mail committee@derbyshiredales.gov.uk of any apologies for absence and substitute arrangements.

2. ELECTION OF A CHAIRMAN

Proposal that a Member of the Committee be elected Chairman.

3. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council's Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close friends.

Interests that become apparent at a later stage in the proceedings may be declared at that time.

4. EXCLUSION OF PUBLIC AND PRESS

At this point the Committee will consider excluding the public and press in order to consider its decision in private in accordance with the hearing procedure.

5. TAXI / PRIVATE HIRE VEHICLE DRIVER LICENSING

3 - 11

To determine whether Applicant A is a fit and proper person to hold a Licence to drive a Hackney Carriage/Private Hire Vehicle in Derbyshire Dales.

Members of the Committee Nominated to hear this Appeal:

Councillor: Ann Elliott, Graham Elliott and Jean Monks

Nominated Substitute: Councillor Joyce Pawley

LICENSING AND APPEALS COMMITTEE

6 FEBRUARY 2019

Report of the Head of Regulatory Services

REVIEW OF TAXI/PRIVATE HIRE VEHICLE DRIVER'S LICENCE

PURPOSE OF REPORT

To review the combined Hackney Carriage/Private Hire Driver's Licence held by Driver A, in accordance with the Council's current Taxi and Private Hire Licensing Policy's Breaches of Conditions and Convictions Scheme.

RECOMMENDATION

That the Committee determines whether Driver A is a fit and proper person to hold a licence to drive a Hackney Carriage/Private Hire Vehicle.

WARDS AFFECTED

All

STRATEGIC LINK

An effective licensing regime contributes towards the District Council's priority of a thriving district, particularly in relation to business growth and job creation. Effective enforcement of this regime contributes to our vision of a distinctive rural environment with towns and villages that offer a high quality of life.

1 BACKGROUND

1.1 The Licensed Driver

Driver A has been a licensed taxi/private hire vehicle driver with the Council since July 2010, and had not been the subject of any complaints during the following 8 years. DBS Checks have been carried out every 3 years since the licence was first granted, and DVLA Checks made every year during the same period.

The DBS Checks have not revealed any convictions, or similar. The DVLA record showed a conviction in 2014 for failing to provide details of the identity of a driver resulting in 6 penalty points on the licence, but did not result in any action by the Council as the Policy at the time allowed any driver to accumulate 6 points on his/her DVLA Driving Licence without being referred to Committee.

1.2 Test Purchase Operations – Plying for Hire

Chesterfield Borough Council's Licensing Team carry out regular test purchase operations in the town centre to check that drivers of licensed vehicles are complying with the law relating to plying for hire in the Borough of Chesterfield.

These operations are not designed to catch out drivers who are acting legally or to trick them into acting illegally.

Test Purchasing Officers can approach any parked Private Hire Vehicle or Hackney Carriage that has not been licensed by the Borough Council. They can also attempt to flag down licensed vehicles travelling along any road in the Borough.

Before a test purchase operation is carried out the officers are briefed on the procedure. Officers are divided into 2 teams – one to attempt to hire a private hire vehicle or hackney carriage vehicle not licensed by Chesterfield Borough Council and ask to be taken to a pre-determined destination point. The second team wait at the destination point to observe the fare being paid, and then approach the driver, explain the operation that has just taken place and inform the driver that an offence of plying for hire illegally may have been committed. An Officer would Caution the Driver and ask for driver and vehicle details, and details of the last booking carried out. The driver would be issued with an inspection form advising that he/she is under investigation and that the incident will be reported to the Council that licensed the driver and vehicle.

1.3 Test Purchase Operation 7th/8th July 2018

On 7th/8th July 2018, 4 enforcement officers from Chesterfield Borough Council were carrying out a test purchase operation in the town centre. 2 of the officers attempted to hire a private hire vehicle licensed by Derbyshire Dales District Council and get the driver to agree to take them to the pre-arranged destination point. The journey was not pre-booked as is required with a private hire vehicle.

2 of the officers have submitted witness statements which explain where and how Driver A was approached in the town centre and agreed to take them to the pre-arranged destination. The other 2 officers have submitted witness statements which explain what took place when Driver A arrived at the destination and the first 2 officers had left the vehicle. Driver A was reluctant to provide any details of his/her Taxi/PHV Driver Licence, and did not assist the Lead Officer in completing his pocket notebook. The officers' statements will be made available for the Committee's consideration.

1.4 Interview under Caution – PACE (Police and Criminal Evidence Act 1984)

On 9th July 2018 the Lead Enforcement Officer from Chesterfield Borough Council contacted this Council's Licensing Manager and reported the incident. It was agreed that Driver A would be invited to attend the District Council Offices for a formal interview under PACE (Police and Criminal Evidence Act). The interview was arranged for 27th July 2018.

1.5 On 27th July 2018 Driver A attended the Town Hall in Matlock for an interview. The events which had taken place during the early hours of the morning on 8th July were explained to Driver A. Several breaches of the District Council's Taxi and Private Hire Licensing Policy had been identified and these were explained in detail to Driver A.

1.6 Driver A was advised that Officers believed that offences of using an unlicensed vehicle or vehicle without insurance; obstruction of an authorised officer; and failure to wear/display a licensed driver's badge had been committed. The matter would be referred to the appropriate officer at Derbyshire Dales District Council to determine the next course of action. This could be to refer for prosecution, or to use the District Council's Penalty Points Scheme in the current Taxi and Private Hire Licensing Policy and refer to the Licensing and Appeals Committee.

1.7 Driver A accepted this decision, and was advised that he would receive written confirmation and a copy of the interview transcript in due course.

1.8 Breaches of Licensing Conditions/Policy/Legal Requirements/Code of Conduct not subject to Prosecution

In 2017/2018 the District Council reviewed, and re-published its Taxi and Private Hire Licensing Policy. The final Policy was adopted by the Council on 12 April 2018 and came into effect on 1 May 2018.

1.9 The Breaches of Conditions and Convictions Scheme produced in Appendix F of the Policy is an administrative system that provides a transparent and proportionate method generally used to determine the relevance of criminal convictions in relation to applications for hackney carriage and private hire vehicle driver's licences. (See **Appendix 1** for details of Schedule 4 of Appendix F).

1.10 After consideration it was agreed that the Council's Penalty Points Scheme would be used for this case and Driver A was issued with 28 penalty points under the Policy's Breaches of Licensing Conditions and Convictions Scheme – schedule 4 as follows:

Provision	Points
Plying for hire by private hire drivers	12
Obstruction of an authorised officer or police officer.	12
Failure to wear / display drivers badge	4
Total Points	28

Following discussions with the Council's Legal Team and the Head of Regulatory Services it was agreed that the potential offence relating to driving an uninsured licenced vehicle did not apply.

1.11 Paragraph 3.4.of the Scheme requires that where a licence-holder accumulates more than 12 penalty points within any 36 month period, the matter will be referred to the Council's Licensing and Appeals Committee to decide whether the driver is a 'fit and proper' person to hold a licence.

1.12 Fit and Proper 'Test'

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 for whom you care, to get into a vehicle with this person alone?"

1.13 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 Vehicle driver's licence.

2 OPTIONS

The Committee has the following options:

1. To resolve that the applicant is a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence.
2. To suspend or revoke the licence on the grounds that the Driver A is not a fit and proper person to hold a Hackney Carriage/Private Hire Driver's Licence.

Members are reminded that the applicant has the right of appeal to the Magistrates' Court.

3 PROCEDURE

The procedure for the Committee is set out in **Appendix 2**.

4 RISK ASSESSMENT

4.1 Legal

The Committee must exercise their discretion reasonably.

Section 61(3) of the Local Government (Miscellaneous Provisions) Act 1976 states that any driver aggrieved by a decision of a district council to suspend or revoke his or her licence may appeal to a magistrates' court.

4.2 Financial

There are no financial risks arising from this report.

4.3 Corporate Risk

These decisions are one of the functions in which the Council acts in a quasi-judicial function. It is important that these decisions are robust to protect the reputation the Council has for sound decision making that stands up to scrutiny.

5 OTHER CONSIDERATIONS

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

6 CONTACT INFORMATION

For further information contact:

Eileen Tierney, Licensing Manager

Tel: 01629 761374 Email: eileen.tierney@derbyshiredales.gov.uk

7 BACKGROUND PAPERS

None.

8 ATTACHMENTS

Appendix 1 – Appendix F – schedule 4 of DDDC Taxi and Private Hire Licensing Policy

Appendix 2 - Committee Hearings Procedure

Appendix F - Schedule 4

Breaches of Licensing Conditions/Policy/legal requirements/Code of Conduct not subject to prosecution

The Council reserves the right to issue points for matters that are covered by legislation or any Council conditions or Policies relating to hackney Carriages where Officers are satisfied that there is evidence of the breach. The Council will also use the enforcement policy to decide whether to award points or to prosecute a driver or operator where there is an offence. The Council will, where appropriate, also pass evidence to other relevant enforcement authorities.

Offence/ Breach of Condition	Points Applicable	Points applied to:	
		Driver	Person responsible for the vehicle condition*
Providing false or misleading information on licence application form/failing to provide relevant information or relevant fee	6	✓	✓
Failure to notify, in writing, a change of address within 10 working days	3	✓	✓
Refusal to accept hiring without reasonable cause	10	✓	
Unreasonable prolongation of journeys or any misconduct regarding the charging of fares	6	✓	
Plying for hire by private hire drivers	12	✓	✓
Using unlicensed vehicle or vehicle without insurance	12 + Committee		✓
Failure to produce relevant documents within timescale when requested by an Authorised Officer	4	✓	✓
Failure to provide proof of insurance cover when requested	6	✓	
Failure to produce hackney carriage or private hire vehicle for testing when required	4		✓
Using a vehicle subject to a suspension order issued by an Authorised Officer or a police officer	12 + Committee	✓	✓
Failure to maintain a vehicle in a safe mechanical and structural condition (VOSA classes I or D).	6		✓
Using a vehicle for which the licence has been suspended or revoked	12 + Committee	✓	✓

Failure to notify an accident or damage to a licensed vehicle within 72 hours (3 days) of the occurrence if the damage would materially affect the safety, performance or appearance of the vehicle or the comfort or convenience of persons carried therein.	4	✓	✓
Carrying more passengers than stated on the licence	6	✓	
Failure to display external/internal licence plate or signs as required	4		✓
Failure to notify transfer of private hire or hackney carriage vehicle licence within 14 days of sale	4		✓
Displaying signs or advertisements in or on the vehicle that do not meet the requirement of the Policy of Conditions	3		✓
Failure to use a roof light that meets the requirements of the Conditions of Policy	4	✓	
Failure to maintain records in a suitable form of the start and finish of work of each driver each day	4		✓
Failure to produce on request records of drivers work activity	4		✓
Using a meter/taximeter that does not meet the requirements of the Policy or Conditions.	9	✓	✓
Obstruction of an authorised officer or police officer.	12	✓	✓
Displaying any feature on a private hire vehicle that may suggest that it is a taxi	6		✓
Failure to carry an assistance dog without requisite exemption	10	✓	✓
Driver not holding a current DVLA licence	12 +Committee	✓	✓
Failure to wear /display drivers badge	4	✓	
Failure to notify in writing, a change in medical circumstances	6	✓	✓
Failure to comply with Appendix J of the policy regarding dress code	3	✓	
Failure to comply with Section 9 of the policy regarding smoking (page 18)	3	✓	
Failure to comply with Appendix I of the policy regarding driver conduct	6	✓	
Failure to comply with the requirements for rank etiquette	6	✓	
Failure to comply with bye-laws not specifically covered in this schedule	3	✓	
Causing a private hire vehicle to drop off, pick up or park on a marked rank	3	✓	

Failure to maintain proper records of private hire vehicle	3		✓
Failure to keep or produce records of private hire bookings or other documents required to be kept or produced	6		✓
Misleading use of the words 'taxi' or 'cab' on advertising materials	3		✓
Failure to issue receipt on request	4	✓	✓
Failure to notify the Licensing section, in writing, of any motoring or criminal conviction within 10 working days of conviction, caution, motoring offence or fixed penalty during period of current licence	6	✓	✓
Fail to notify the Licensing section at the earliest opportunity and in any case within 24 hours, of being the subject of an investigation for other than a minor motoring offence. Such notification to be in writing.	6	✓	✓
Failure to display Council's Maximum Tariff Fare Card	3	✓	✓
Failure to attend punctually at appointed time and place without sufficient cause	4	✓	✓
Failure to surrender a hackney carriage/private hire drivers licence/badge/plate after suspension, revocation or refusal to renew	4	✓	✓
Operating the horn and/or shouting as a means of signalling that the vehicle has arrived	3	✓	✓
Failure to take lost property to a Police Station /District Council Offices	4	✓	✓
Failure to comply with wheelchair requirements including provision of ramps and straps	4	✓	✓
Using an e-cigarette in a licensed vehicle	3	✓	
Failure to comply with any other conditions	3	✓	✓
Fail to attend CSE training without reasonable excuse.	12+ Committee	✓	
Breach UK immigration laws	12+ Committee	✓	✓



LICENSING AND APPEALS COMMITTEE PROCEDURE (Taxi Licensing)

1. Introduction by the Chair explaining that the process is not an adversarial one and all comments should be directed through the Chair
2. Report of the Licensing Officer
3. Any questions for the Licensing Officer from Councillors
4. Any questions for the Licensing Officer from the Applicant/Licence Holder (or representative)
5. Statement from Licence Holder/Applicant (or representative)
6. Any questions from Councillors
7. Any questions from the Licensing Officer
8. Summing up by the Licensing Officer
9. Summing up by the Applicant/Licence Holder (or representative)
10. Clarifications required by any party.
11. Councillors retire in order to consider whether the Licensee is/remains a fit and proper person to hold the relevant Licence, whether or not to impose a sanction and if so what it should be.
12. The Chairman will announce the Committee's decision.