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01 June 2016

To: All Councillors

As a Member or Substitute of the **Licensing and Appeals Sub - Committee**, please treat this as your summons to attend a meeting on **Thursday 9 June 2016 at 10.30am in the Committee Room, Town Hall, Matlock DE4 3NN.**

Yours sincerely

A handwritten signature in black ink, appearing to be 'Sandra Lamb', written in a cursive style.

Sandra Lamb
Head of Democratic 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

4 - 7

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

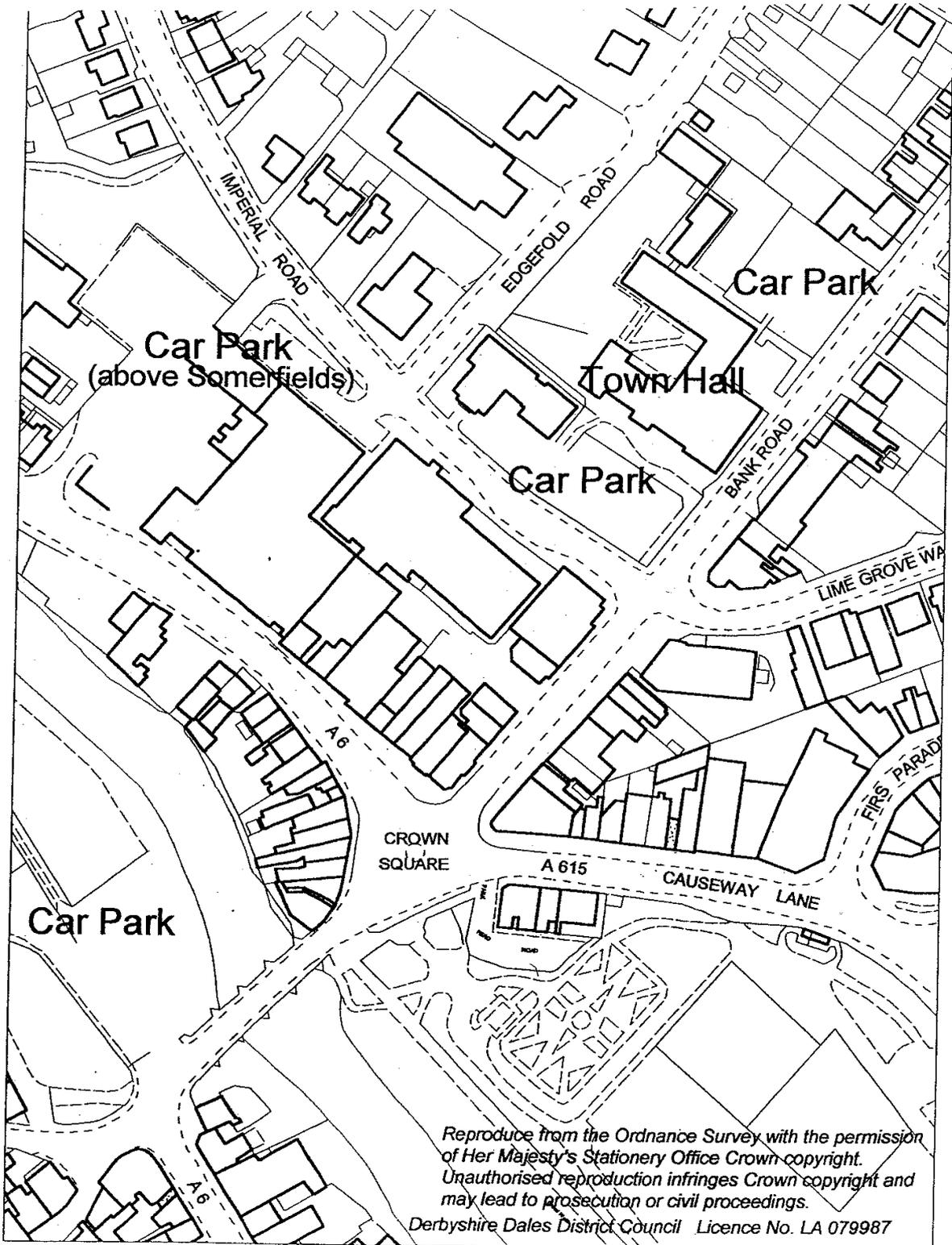
Members of the Committee Nominated to hear this Appeal:

Councillors: Tom Donnelly, Angus Jenkins and Joyce Pawley.

Substitute: Councillor Helen Froggatt

Matlock -
Matlock

Derbyshire Dales District Council Town Hall, Bank



LICENSING AND APPEALS COMMITTEE

9 JUNE 2016

Report of the Head of Regulatory Services

TAXI/PRIVATE HIRE VEHICLE DRIVER LICENSING

PURPOSE OF THE REPORT

This report informs the Committee of a situation where a driver's taxi licence has expired due to the late return of a Disclosure and Barring Service Certificate and asks that a request for an exemption from the District Council's Policy requirement to sit the Council's Knowledge Test is considered when the driver applies for a new taxi driver licence.

The report informs the Committee that licensed drivers (and new applicants) are currently experiencing unprecedented delays in obtaining a Disclosure and Barring certificate, despite submitting the application up to 2 months in advance of it being required.

The Applicant was a licensed driver with the District Council from 14 May 2004 until 13 May 2016. He applied for a new DBS Certificate as part of the renewal procedure but this was not returned before the expiry date of the licence. At the time of writing the report, it is not known when the DBS Certificate will be returned to the applicant, although it is at stage 4 of 5 stages in total.

The legal issue to be determined by the Committee is whether the applicant is a fit and proper person to hold a licence to drive a Hackney Carriage/Private Hire Vehicle.

RECOMMENDATION

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

WARDS AFFECTED

All

STRATEGIC LINK

An effective licensing regime supports the core values and key aims set out in the District Council's Corporate Plan, in particular the vision of a safe Peak District.

1 BACKGROUND

1.1 The Driver

The Applicant was a licensed taxi/private hire vehicle driver with the District Council from 14 May 2004 to 13 May 2016. In order for the licence to remain valid the applicant needed to renew the licence before its expiry on 13 May 2016.

1.2 At the beginning of April, the Applicant completed the required DVLA check (due annually) and provided a satisfactory medical report (due 3 yearly). When the Applicant completed the licence renewal form, an application was also made to the Disclosure and Barring Service (DBS).

However, the DBS Certificate was still awaited by the applicant at the expiry date of his licence, and he has been unable to drive his licensed vehicle since 14 May 2016.

- 1.4 The Licensing Manager has recently been made aware of unprecedented delays in some DBS checks being processed and was concerned that the DBS certificate may not be received before the licence renewal date, so suggested at the time that the driver should make an application for a new driver's badge and attend this committee to seek an exemption from some of the application process requirements.
- 1.5 It is the District Council's current Policy that all applicants for a new driver licence must first pass the Council's Knowledge Test (introduced in 2009), provide satisfactory reports from the DVLA, and the Disclosure & Barring Service, and a satisfactory medical report.
- 1.6 When applying for a combined Hackney Carriage/Private Hire Vehicle Driver's Licence, an applicant is asked to declare all convictions or cautions. The Applicant has declared that he has had no convictions or cautions.
- 1.7 The Committee has powers to grant an exemption of any requirement of the Taxi Licensing Policy, for good reason. Each request for an exemption must be considered on a case-by-case basis.

1.8 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:

- 1.9 "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?"
- 1.10 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.

1.11 Duration of a Combined Hackney Carriage/Private Hire Vehicle Driver's Badge

Since 1st October 2015 the District Council has been required to grant a combined Hackney Carriage/Private Hire Driver's Licence for a three-year period.

- 1.12 The legislative change did provide that in particular circumstances (case-by-case basis) a driver's licence can be issued for a lesser time period if the District Council thinks it appropriate.

2 **OPTIONS**

Members have the following options:

1. To resolve that the Applicant is be exempt from the Policy requirement to sit the District Council's Knowledge Test, as this was not required of him as he was granted 'grandfather rights' in 2009 when the Policy first introduced the Knowledge Test.

2. To resolve that the Applicant continues to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence, and that the application for a new licence should be granted for a period of 3 years, exempting the requirement for the applicant to sit the Council's Knowledge Test, or for the DBS Certificate to be provided at this stage, but subject to the provision of a satisfactory DBS Certificate within 3 months of the grant of the licence.
3. To resolve that the Applicant is a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence, and to grant a new licence for a period of 6 months from the date of this Committee, subject to the provision of a satisfactory DBS Certificate within 3 months from the grant of the licence and exempting the driver from the requirement to sit the Council's Knowledge Test.

In these circumstances under the Council's Scheme of Delegation the Licensing Manager would then renew the licence for a further 2½ years once a satisfactory DBS certificate had been received.

4. To resolve that the Applicant cannot be considered a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence, until the DBS Certificate has been received, and if this is not before the Hearing on 9 June 2016, the driver's new licence will not be granted until the required checks have been received.
5. To refuse the application to renew the driver licence on the grounds that the applicant is not a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence.

Members are reminded that the applicant has the right of appeal to the Magistrates' Court, on refusal to grant a licence.

3 PROCEDURE

The procedure for the Committee is set out in Appendix 1.

4 RISK ASSESSMENT

4.1 Legal

The Committee must exercise their discretion reasonably.

Section 52 of the Local Government (Miscellaneous Provisions) Act 1976 states that any person aggrieved by:

- I. The refusal of the District Council to grant a licence under Section 51 of the Act, or
- II. Any conditions attached to the grant of a driver's licence may appeal to a Magistrates Court.

Any appeal must be made to the Magistrates Court within 21 days of notification of such a decision.

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 – Committee Hearings Procedure

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.