



**THE LICENSING AND HEALTH AND SAFETY
ENFORCEMENT SUB-COMMITTEE**

TUESDAY 22 JANUARY 2013 AT 7:30 PM

COUNCIL CHAMBER, CIVIC CENTRE, HEMEL HEMPSTEAD

The Councillors listed below are requested to attend the above meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Cllr G Chapman
Cllr Conway
Cllr Fantham
Cllr Mrs Green (Vice-Chairman)

Cllr Lawson (Chairman)
Cllr Link
Cllr G Sutton

Substitutes: Councillors Mrs Bassadone, Bhinder, R Hollinghurst, Rance, Ryan and R Sutton

(Please note Members may only be appointed as substitutes if they have been trained for Licensing Committee)

For further information, please contact Trudi Coston on Tel: 01442 228226, or Email: Trudi.coston@dacorum.gov.uk Information about the Council can be found on our website: www.dacorum.gov.uk

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1. MINUTES

To confirm the minutes of the meeting of the Licensing and Health and Safety Enforcement Sub-Committee held on 27 November 2012.

2. APOLOGIES FOR ABSENCE

To receive any apologies for absence

3. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter, who attends a meeting of the authority at which the matter is considered:

(i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and

(ii) may not participate in any discussion or vote on the matter and must withdraw to the public seating area.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Members' Register of Interests or the subject of a pending notification, must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interest are defined in Part 2 of the Members' Code of Conduct.

4. PUBLIC PARTICIPATION

An opportunity for members of the public to make statements and ask questions in accordance with the rules on Public Participation

5. EXCLUSION OF THE PUBLIC

To consider passing a resolution in the following terms:

That, under s.100A (4) of the Local Government Act 1972 Schedule 12A Part 1, as amended by the Local Government (Access to Information) (Variation) Order 2006, the public be excluded during the item in Part II of the Agenda for the meeting, because it is likely, in view of the nature of the business to be transacted, that if members of the public were present during this item there would be disclosure to them of exempt information relating to an individual which would be likely to reveal their identity (Items 6, 7 and 8).

DACORUM BOROUGH COUNCIL

LICENSING AND HEALTH AND SAFETY ENFORCEMENT SUB-COMMITTEE

27 NOVEMBER 2012

Present-

MEMBERS:

Councillor Lawson (Chairman), Conway, Fantham, Mrs Green, Lawson, Link and Sutton

OFFICERS:

L Crowley	Solicitor Advocate/Barrister
R Hill	Licensing Team Leader
R Mabbitt	Licensing Enforcement Officer
P Bowles	Member Support Officer

Other Persons Present:

Miss W – Item 7
Mr I A – Item 8
Mr H A – Item 8

The meeting began at 8.00 pm

1. INTRODUCTIONS

The Chairman introduced himself and welcomed everyone to the meeting.

2. MINUTES

Minutes of the meeting held on 18 September 2012 were confirmed by the Members present and were then signed by the Chairman.

3. APOLOGIES FOR ABSENCE

There were no apologies for absence.

4. DECLARATIONS OF INTEREST:

There were no Declarations of Interest.

5. PUBLIC PARTICIPATION

None

6. EXCLUSION OF THE PUBLIC

Resolved:

That, under S.100A (4) of the Local government Act 1972 the public be excluded during the items in Part II of the Agenda for this meeting, because it was likely, in view of the nature of the business to be transacted, that if members of the public were present during those items there would be disclosure to them of exempt information relating to an individual which would be likely to reveal their identity (Minutes 7 and 8).

7. REVIEW OF PRIVATE HIRE OPERATOR LICENCE – MR W

Full details are in the Part 2 minutes

8. NEW APPLICATION FOR OPERATOR LICENCE – MR I A AND MR H A

Full details are in the Part 2 minutes

The meeting ended at 8.44 pm

APPENDIX B

PROCEDURE FOR THE LICENSING AND HEALTH AND SAFETY ENFORCEMENT SUB-COMMITTEE (PRIVATE HIRE VEHICLE AND HACKNEY CARRIAGES)

1. The Chairman will open the proceedings by stating the nature of the matter, which is to be considered, (first application/renewal/suspension/revocation), whether the proceedings concern a vehicle, driver or operator licence, and the name of the applicant or licence holder.
2. The Chairman will introduce himself/herself and the Members of the Committee, the Clerk to the Committee and any other officer present.
3. The Chairman will ask the officers to confirm whether or not the formal requirements in respect of the matter to be considered have been complied with. In the case of a proposed suspension or revocation of licence or a refusal to renew, the Chairman will ask the officers to confirm whether or not the requisite 14 days' prior notice has been served on the licence holder.
4. If satisfied as to the formal requirements the Committee will consider the merits of the application or proposed suspension/revocation and the report of the officers. The Committee may ask the officers for clarification of any points in issue.
5. The Chairman will then invite the applicant or licence holder to make any representations. The applicant or licence holder may make his/her representations personally or through a representative, who shall first identify him/herself.
6. The Chairman and other members of the Committee may ask the applicant or licence holder questions and points of clarification.
7. The applicant or licence holder, his/her representative (if any) and any officer present (with the exception of the Clerk to the Committee) shall withdraw.
8. The members of the Committee consider their decision. If any further clarification or information is required from the applicant or licence holder or any officer, all parties will be recalled
9. All parties will be recalled for the announcement by the Chairman of the Committee's decision.
10. The Committee's decision will be confirmed in writing by the Solicitor to the Council.
11. At any point in this procedure, the Committee may pass a resolution excluding the press and public from the meeting on the basis that, if they were to remain, there may be disclosure of exempt information (information relating to individuals which is likely to reveal their identities).

DACROUM BOROUGH COUNCIL

Statement About Relevant Convictions

Note: In the Council's view this statement and the guidelines that follow are compatible with the rights and freedoms under the European Convention on Human Rights

1. When submitting an application for a licence to drive a hackney carriage or a private hire vehicle or the renewal of a licence applicants are required to declare on the application form **all** previous convictions they may have. This includes motoring offences. It also includes spent convictions, although the Council will only take these into account if they are considered to be relevant to the issue to be decided. The Council will take into consideration the nature of the offence involved, the age of the conviction and its apparent seriousness. Applicants are required to declare all formal cautions and endorsable fixed penalties they have received and to provide details of all criminal matters of which they are currently the subject of criminal investigation or prosecution.
2. The information provided will be treated in confidence and will only be taken into account in assisting the Council to determine whether the applicant is a fit and proper person to hold a hackney carriage or private hire driver's licence for the purposes of sections 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976.
3. All applicants will be required to submit to a Criminal Record Bureau Disclosure at Enhanced level. This level of disclosure includes details of spent convictions and police cautions. Taxi driving is an occupation listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Council is therefore allowed to take into consideration any relevant spent convictions when deciding your application. More information on Criminal Record Bureau can be found at www.crb.gov.uk
4. The issue of summons or the arrest and release on bail with or without charge can indicate that there has been an event, which may cause the Council to review the suitability of an applicant or a licensed driver to hold a licence. Applications from persons who are the subject of current criminal investigations will be dealt with on the basis that they could be convicted of the offence.
5. The disclosure of a criminal record or other information relating to criminal matters will not necessarily debar an applicant from obtaining a driver's licence. The Council will consider each case on its own merits in deciding whether an applicant is a fit and proper person to hold a licence.
6. The Council may fail to be satisfied that a person is a fit and proper person to hold a driver's licence for any good reason. If adequate evidence of good character is not available or if there is good reason to question or doubt the evidence produced then that could amount to good reason to refuse an application.

7. In circumstances where previous convictions or other information relating to criminal matters is disclosed the Council will take the following into consideration:
 - The nature of the offence
 - When it was committed
 - The date of conviction
 - The applicant's age when the offence was committed, and
 - Any other factors which might be relevant.

Where the applicant has been convicted of a criminal offence the Council cannot review the merits of the conviction.

8. Drivers licensed by the Council are required to notify the Licensing Division immediately in writing of any convictions imposed on him/her during the period of the licence.
9. The Council has adopted the following guidelines relating to the relevance of convictions to which it refers when determining applications for drivers' licences. The guidelines do not deal with every type of offence. However, offences described in the guidelines and offences of a similar nature, though differently entitled in any statutory provision, modification or re-enactment, will be taken into account in accordance with the guidelines.
10. The guidelines are not an attempt to define what is a "fit and proper person".
11. The guidelines have been drawn up in accordance with government advice contained in Department of Transport Circular 2/92 and Home Office Circular 13/92
12. Any person refused a driver's licence on the grounds that the Council is not satisfied that they are not a fit and proper person to hold a licence has the right of appeal to the magistrates' court within 21 days' notice of refusal.
13. These guidelines will also be taken into account by the Council when dealing with applications for the renewal of driver's licence and when considering whether to suspend or revoke an existing driver's licence.

GUIDELINES TO BE USED BY THE LICENSING AND HEALTH AND SAFETY ENFORCEMENT SUB COMMITTEE WHEN CONSIDERING THE RELEVANCE OF CONVICTIONS

General

1. Each case will be decided on its own merits.
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 carriages and private hire vehicles are suitable persons to do so. The Council, will wish to satisfy itself that applicants and licensed drivers 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 to abuse or assault passengers.
3. A person with a current conviction for a serious crime need not be permanently excluded from holding a licence but should be expected to:
 - remain free of conviction for an appropriate period and
 - show adequate evidence of good character from the time of conviction.

Simply remaining free of conviction will not generally be regarded as sufficient evidence of good character.

4. 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 and may demonstrate a pattern of inappropriate behaviour, which will be taken into account.
5. The following examples are a general guide on the action that might be taken where convictions are disclosed.

(a) Offences of Dishonesty

Drivers of hackney carriages and private hire vehicles are expected to be persons of trust. It is comparatively easy for a dishonest driver to defraud the public by demanding more than the legal fare and in other ways.

Members of the public entrust themselves in to the care of drivers and expect to be treated fairly and conveyed in a safe manner.

For these reasons a serious view is taken of any convictions involving dishonesty. In general a period of 3 to 5 years free of conviction will be required before an application is likely to be considered favourably.

In particular, an application will normally be refused where the applicant has a conviction for an offence of: -

Theft

Burglary

Fraud

Benefit Fraud (including offences under ss. 111A and 112 of the Social Security Administration Act 1992)

Handling or receiving stolen goods
Forgery
Conspiracy to defraud
Obtaining money or property by deception
Other deception
Fraud Act

And the conviction is less than 3 years prior to the date of the application.

Between 3 and 5 years after conviction more weight will be given to the circumstances of the offence and any evidence produced which demonstrates good character since the date of conviction.

(b) Violence

As hackney carriage and private hire drivers maintain close contact with the public, in general a period of 3 to 10 years free of conviction for offences involving violence (depending on the nature and seriousness of the offence) will be required before an application is likely to be considered favourably.

In particular: -

An application will normally be refused where the applicant has a conviction for an offence of: -

Murder
Manslaughter
Manslaughter or culpable homicide while driving
Arson
Malicious wounding or grievous bodily harm (s20 Offences Against the Person Act 1861) which is racially aggravated (s 29(1)(a) Crime and Disorder Act 1998)
Actual bodily harm (s.47 Offences Against the Person Act 1861) which is racially aggravated (s29 (1)(b) Crime and Disorder Act 1998)

And the conviction is less than 10 years prior to the date of application.

An application will normally be refused where the applicant has a conviction for an offence of: -

Grievous bodily harm with intent (s.18 Offences Against the Person Act)
Grievous bodily harm (s.20 Offences Against the Person Act)
Robbery
Racially-aggravated criminal damage (s.30 Crime and Disorder Act 1968)
Racially-aggravated s.4 Public Order Act 1986 offence (fear or provocation of violence) (s.31 (1)(a) Crime and Disorder Act 1998)
Racially-aggravated s.4A Public Order Act 1986 offence (intentional harassment, alarm or distress) (s.31 (1)(b) Crime and Disorder Act 1998)

And the conviction is less than 8 years prior to the date of application.

Between 8 and 10 years after conviction more weight will be given to the circumstances of the offence and any evidence produced which demonstrates good character since the date of conviction

An application will normally be refused where the applicant has a conviction for an offence of: -

Common assault
Common assault which is racially aggravated (s.29 (1)(c) Crime and Disorder Act 1998)
Assault occasioning actual bodily harm (s.47 Offences Against the Person Act)
Assault police
Affray
Racially aggravated s.5 Public Order Act 1986 offence (harassment, alarm or distress) (s.31 (1)(c) Crime and Disorder Act 1998)
Riot
Obstruction
Possession of offensive weapon
Possession of firearm
Criminal damage
Violent disorder
Resisting arrest

And the conviction is less than 3 years prior to the date of application.

Between 3 and 8 years after conviction more weight will be given to the circumstances of the offence and any evidence produced to show good character since the date of conviction.

(c) Drugs

An application will normally be refused where the applicant has a conviction for a drug-related offence and the conviction is less than 5 years prior to the date of application.

In addition applicants will normally be required to show a period of at least 5 years free from drug taking and/or 5 years after detoxification treatment if (s)he was an addict.

(d) Indecency Offences

As hackney carriage and private hire drivers often carry unaccompanied passengers, applicants with convictions for soliciting, importuning, indecent exposure, or any sexual offence will normally be refused a licence until they can show a substantial period (usually between 5 and 10 years) free from any such conviction.

In particular, an application will normally be refused where the applicant has a current conviction for an offence of: -

Rape
Indecent assault
Gross indecency with a female
Gross indecency with a male
Indecent assault on a child under 16 years
Buggery
Offences under the Sexual Offences Act 2003

And the conviction is less than 10 years prior to the date of application.

(e) Motoring convictions

Major traffic offences

An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire drivers. However, where the conviction is within 6 months prior of the application the application will normally be refused.

More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

A list of offences to which this paragraph applies is attached at Appendix A.

Minor Traffic Offences

Isolated convictions for minor traffic offences should not prevent a person from proceeding with an application. However, the number, type and frequency of this type of offence will be taken into account and if there are several offences of this nature the applicant will normally be expected to show a period free of conviction of at least 6 months.

In particular, an application will normally be refused where the applicant has 12 or more penalty points on his DVLA licence (whether or not the applicant was convicted by a court for the offences for which penalty points were imposed) or where the applicant has more than one conviction for this type of offence within the last 6 months.

A list of offences to which this paragraph applies is attached at Appendix 2.

Hybrid Traffic Offences

Offences of the type listed in Appendix 3 will be treated as major traffic offences where the court has awarded 4 or more penalty points for the offence and as minor traffic offences if the court awarded 3 or less penalty points for the offence.

Disqualification

Where an applicant has been disqualified from driving because of a major traffic offence the application will generally be refused unless a period of 2 years free of conviction has elapsed from the restoration of the DVLA licence.

Where several minor traffic offences have resulted in the applicant being disqualified from driving for a period of time this will normally be taken as reflecting seriously on the applicant's driving standard. Generally, a period of 12 months free from conviction must have elapsed from the restoration of the DVLA licence.

In "totting-up" cases where disqualification is considered by the court, even if the court does not disqualify (e.g. because of exceptional circumstances) a driver the Council is likely to refuse a hackney carriage or private hire driver's licence. This is because different criteria apply and an applicant will normally

be expected to show a period of 12 months free from conviction from the date the court made its finding of exceptional circumstances justifying the non-disqualification.

(f) Offences under the Town Police Clauses Act and Part II of the Local Government (Miscellaneous Provisions) Act 1976

One of the main purposes of the licensing regime set out in the Town Police Clauses Act and Part II of the Local Government (Miscellaneous Provisions) Act 1976 (“the Acts”) is to ensure the protection of the public. For this reason a serious view is taken of convictions for offences under the Acts (including illegally plying for hire) when deciding whether an applicant is to be treated as a fit and proper person to hold a licence.

In particular, an applicant will normally be refused a licence where (s)he has been convicted of an offence under the Acts at any time during the 6 months preceding the application or has more than one conviction within the last 2 years preceding the date of the application.

(g) Drunkenness

With a motor vehicle

A serious view will be taken of convictions of driving or being in charge of a vehicle while under the influence of drink. Where a disqualification has occurred as a result of a drink-driving offence, at least 5 years free from conviction should elapse after the restoration of the DVLA licence before an applicant is granted a licence.

An isolated conviction for drunkenness, without disqualification, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. More than one conviction for this type of offence or one such offence within the last five years is likely to merit refusal.

In addition, applicants will normally be required to show a period of at least 5 years has elapsed after completion of detoxification treatment if (s)he was an alcoholic.

Not in a motor vehicle

An isolated conviction for drunkenness need not debar an applicant from gaining a licence. In some cases, a warning may be appropriate. However, a number of convictions for drunkenness could indicate a medical problem necessitating critical examination and refusal of a licence.

(h) Spent Convictions

The Council will consider spent convictions where it appears to be relevant for deciding whether the applicant is a fit and proper person to hold a licence and that in order to arrive at a decision it is necessary to admit or require evidence relating to that spent conviction.

(i) Cautions and Endorsable Fixed Penalties

For the purpose of these guidelines formal cautions and endorsable fixed penalties shall be treated as though they were convictions.

Major Traffic Offences

AC10	Failing to stop after an accident
AC20	Failing to give particulars or to report an accident within 24 hours
AC30	Undefined accident offences
BA10	Driving whilst disqualified by order of court
BA20	Attempting to drive whilst disqualified by order of court
CD10	Driving without due care and attention
CD20	Driving without reasonable consideration for other road users
CD30	Driving without due care and attention or without reasonable consideration for other road users
CD40	Causing death through careless driving when unfit through drink
CD50	Causing death by careless driving when unfit through drugs
CD60	Causing death by careless driving with alcohol level above the limit
CD70	Causing death by careless driving then failing to supply a specimen for analysis
DD40	Dangerous driving
DD60	Manslaughter or culpable homicide when driving a vehicle
DD80	Causing death by dangerous driving
DR10	Driving or attempting to drive with alcohol level above limit
DR20	Driving or attempting to drive while unfit through drink
DR30	Driving or attempting to drive then failing to supply a specimen for analysis
DR40	In charge of a vehicle while alcohol level above limit
DR50	In charge of a vehicle while unfit through drink
DR60	Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive
DR70	Failing to provide specimen for breath test
DR80	Driving or attempting to drive when unfit through drugs
DR90	In charge of a vehicle when unfit through drugs
IN10	Using a vehicle uninsured against third party risks
LC20	Driving otherwise than in accordance with a licence
LC30	Driving after making a false declaration about fitness when applying for a vehicle licence
LC40	Driving a vehicle having failed to notify a disability
LC50	Driving after a licence has been revoked or refused on medical grounds
MS50	Motor racing on the highway
MS60	Offences not covered by other codes
UT50	Aggravated taking of a vehicle

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. IN10 becomes IN16)

Minor Traffic Offences

MS10	Leaving a vehicle in a dangerous condition
MS20	Unlawful pillion riding
MS30	Play street offences
MS40	Driving with uncorrected defective eyesight or refusing to submit to a test
MS70	Driving with uncorrected defective eyesight
MS80-	Refusing to submit to an eyesight test
MS90	Failure to give information as to identity of driver etc
MW10	Contravention of Special Road Regulations (excluding speed limits)
PC10	Undefined contravention of Pedestrian Crossing Regulations
PC20	Contravention of Pedestrian Crossing Regulations with moving vehicle
PC30	Contravention of Pedestrian Crossing Regulations with stationary vehicle
TS10	Failing to comply with traffic light signals
TS20	Failing to comply with double white lines
TS30	Failing to comply with a "Stop" sign
TS40	Failing to comply with direction of a constable or traffic warden
TS50	Failing to comply with a traffic sign (excluding "Stop" sign, traffic lights, or double white lines)
TS60	Failing to comply with school crossing patrol sign
TS70	Undefined failure to comply with a traffic sign

Aiding, abetting, counseling or procuring

Offences coded as above, but with 0 changed to 2 (e.g. PC10 becomes PC12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. PC10 becomes PC14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. PC10 becomes PC16)

Hybrid Traffic Offences

CU10	Using vehicle with defective brakes
CU20	Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
CU30	Using a vehicle with defective tyres
CU40	Using a vehicle with defective steering
CU50	Causing or likely to cause danger by reason of load or passengers
SP10	Exceeding goods vehicle speeding limit
SP20	Exceeding speed limit for type of vehicle (exceeding goods or passenger vehicles)
SP30	Exceeding statutory speed limit on a public road
SP40	Exceeding passenger vehicle speed limit
SP50	Exceeding speed limit on motorway
SP60`	Undefined speed limit offence

Aiding, abetting, counseling or procuring

Offences as coded above, but with 0 changed to 2 (e.g. CU10 becomes CU12)

Causing or permitting

Offences as coded above, but with 0 changed to 4 (e.g. CU10 becomes CU14)

Inciting

Offences as coded above, but with 0 changed to 6 (e.g. CU10 becomes CU16)