Application for Hackney Carriage/Private Hire Driver’s Licence

To: Licensing Sub-Committee

11 May 2010

Main Portfolio Area: Environment and Street Scene

Author of report: Trevor Richardson, Licensing Officer

Classification: Exempt (paragraph 7) - Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

Ward: N/A

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Executive Summary

This report sets out details of information received from the Criminal Records Bureau regarding an applicant for a Joint Hackney Carriage / Private Hire Driver’s licence, Mr Hulkan Altinbas. Under these circumstances the application is referred to this Sub-Committee for consideration and determination.

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Corporate Priorities

This report supports Corporate Priorities:
A4 – Developing stronger and safer communities
A5 – Delivering high quality services to our customers
A6 – Improve customer service and satisfaction

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Report status

For decision.

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Route to Implementation/Timetable:

The recommendation will come into effect immediately subject to any appeal to the Magistrates Court.
Report of Head of Environment and Street Scene Continued

Background/Introduction

(1) Any individual wishing to drive a hackney carriage or private hire vehicle licensed by Tunbridge Wells Borough Council must hold a valid hackney carriage/private hire driver’s licence.

(2) Under section 51 and 59 of the Local Government (Miscellaneous Provisions) Act 1976 the Council must be satisfied that the applicant is a ‘fit and proper’ person to hold a hackney carriage/private hire driver’s licence.

The following details are from the current Tunbridge Wells Borough Council Hackney Carriage and Private Hire licensing policy dated 24.01.2008. A copy of the policy is attached at Appendix ‘A’.

Part F – Fit and Proper Person

Section 63 states:

When submitting an application for a licence to drive a Hackney carriage or PHV any convictions or cautions must be declared even if they are considered “Spent” under the Rehabilitation of Offenders Act 1974. The information provided will be treated in confidence and will only be taken into account in relation to an application for a licence.

Section 64 states:

The disclosure of a criminal record or other information will not debar an applicant from gaining a licence unless this Authority considers that the conviction means the applicant is not a “fit and proper person” to hold a licence.

Section 65 states:

When the Authority receives an application for a licence it will be decided on its own merits having regard to this policy, the provisions of Rehabilitation of Offenders Act (and any amendments) and the protection of the public. Hackney Carriage and PHV drivers are expected to be persons of trust and therefore the principal considerations of any case will be whether the property or well being of the public may be at risk.

Section 66 states:

In making its decision, the Authority will consider the nature of the offence, how long ago, what age the applicant was when it was committed and any other factors that may be relevant.

Section 71 states:

In deciding whether the applicant is a fit and proper person, the circumstances of the offence, the sentence imposed by the Court or the fact an offence is an isolated one, will be considered when dealing with the application for a licence. In considering whether to issue a licence, the overall protection of the public will be the paramount consideration.
Details of the application under consideration

(3) Mr Altinbas is a new applicant for a joint driver’s licence. His application was validated by the Licensing Team on 30 December 2009 all relevant documentation was submitted and appeared to be satisfactory. Following current practice and procedure the application was held by the Licensing Team until we received a response from the Criminal Records Bureau (CRB) disclosure unit. The reason for this is that the Licensing Officer will not issue a joint driver’s licence until he/she is satisfied that the applicant meets all criteria for being a ‘fit and proper’ person.

The CRB disclosure was received by the Licensing Team on 25 February 2010, this disclosure has details of an offence of battery for which Mr Altinbas was cautioned by Kent Police on 31 May 2008. Mr Altinbas has made no secret of the fact that he has this caution on his record; he informed the Licensing Officer at his initial seminar and again whilst out on his local knowledge test.

In these circumstances this matter is referred to this Sub-Committee for consideration and determination. The caution admitted by Mr Altinbas is for battery or common assault, which is a summary only offence.

Guidelines relating to the relevance of convictions

(4) In light of the information supplied, the Council has to determine whether the applicant is a ‘fit and proper’ person to hold a joint hackney carriage/private hire driver’s licence.

Since March 2002, hackney carriage (and private hire) drivers have been included within the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. The consequence of this is that all convictions, irrespective of age, sentence imposed or offence committed, remain live for an applicant for a hackney carriage driver’s licence. This means that they can all be taken into account, although following the approach taken in the Adamson v Waveney District Council [1997] 2 ALL ER 898, it seems reasonable that the local authority should only take convictions into account which are relevant to an application for a licence.

Referring back to the current Tunbridge Wells Borough Council Hackney Carriage and Private Hire licensing policy dated 24 January 2008 and giving a brief synopsis:

A person with a current conviction for serious crime need not be permanently barred from obtaining a licence but should be expected to remain free of conviction for 3 to 5 years, according to the circumstances, before an application is entertained. Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. However, the overriding consideration should be the protection of the public.

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 then a hackney carriage or PHV licence may be granted after its restoration but a warning should be issued as to future conduct.
(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 PHV drivers. 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.*

The Sub-Committee are reminded that each case must be decided on its own merits.

**Human Rights Act 1998 Implications**

(5) Article 1 of the First Protocol is concerned with the protection of property and provides that every person is entitled to peaceful enjoyment of his possessions. The term ‘possessions’ is given a broad definition and includes a licence. However, Article 1 of the First Protocol does not apply to property that a person wants or hopes to acquire. Therefore an applicant for a licence is not able to rely on this Article.

(6) Article 6 relates to the right to a fair hearing. The applicant has been informed that this meeting will be taking place and is aware of the reason why the Sub-Committee is considering his application i.e. the information supplied by CRB.

**Summary of Options open to the Sub-Committee**

(7) The steps an authority may take are:-

a) Grant the licence

b) Grant the licence and put in conditions of review

c) Refuse the application

**Conclusion**

(8) The Council has received valid information from CRB. This information is of a serious nature. In determining this matter the Sub-Committee must decide if Mr Altinbas is a ‘fit and proper’ person to hold a driver’s licence issued by the Council.

**Recommendation:** That the Sub-Committee determine whether the applicant is a ‘fit and proper’ person to hold a local authority joint driver’s licence and decide on the application that has been made.

**Route of appeal.**

The decision of this committee will come into effect on the date of the hearing subject to any appeal to a Magistrates Court or Higher Court.

**Contact Officer:** Trevor Richardson, Licensing Officer – extension 3104

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**Gary Stevenson**  
Head of Environment and Street Scene
Appendices.
Appendix ‘A’ Tunbridge Wells Borough Council Hackney Carriage and Private Hire Licensing Policy

Background Papers:

Department of Transport circular – Disclosure of Criminal Records: Applications for Hackney Carriage and Private Hire Vehicle Drivers’

Local Government (Miscellaneous Provisions) Act 1976


Adamson v Waveney District Council [1997] 2 ALL ER 898