

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 3rd June, 2014, 10.30 am

Councillors: Manda Rigby (Chair), Roger Symonds and Anthony Clarke

Officers in attendance: John Dowding (Senior Public Protection Officer), Kirsty Morgan (Public Protection Officer), Andrew Tapper (Public Protection Officer) and Carrie-Ann Rawlings (Senior Legal Adviser)

28 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

29 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

30 DECLARATIONS OF INTEREST

Councillor Symonds declared an interest in respect of Agenda Item 9 (Coeur de Lion) because he is acquainted with the applicant.

31 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

32 MINUTES - 29TH APRIL 2014

These were approved as a correct record and signed by the Chair.

33 MINUTES - 13TH MAY 2014

These were approved as a correct record and signed by the Chair.

34 LICENSING PROCEDURE - MISCELLANEOUS

Members noted the procedure to be followed for the next three items of business.

35 BATH CHRISTMAS MARKET - AN APPLICATION TO INCREASE THE NUMBER OF UNITS FROM 155 (2013) TO 172 FOR 2014.

Applicant: Bath Tourism Plus, represented by Nick Brooks-Sykes (Chief Executive) and Vicky Bunt (Event Manager).

Objector: Aidan Quinn (Director, Beaux Arts Bath)

The parties confirmed that they understood the procedure to be followed.

Mr Tapper presented the report and invited the Sub-Committee to determine the application.

Mr Brooks-Sykes stated the case for the applicant. He said that the Bath Christmas Market was one of the biggest events in the City, which generated £36m in revenue, the largest slice of which went to businesses in the City and not to the market traders. It is visited by people from all over the country. It generates a surplus for Bath Tourism Plus (a not-for-profit company), which is used to cover losses elsewhere, e.g. on the tourist information centre. He said that the Christmas Market needed to be constantly refreshed to stay ahead of the game in competition with Cribbs Causeway, Cabot Circus and the Salisbury Christmas Market. Last year's market was regarded as a success and the management of coaches, in particular, was generally thought to have been done well. The quality of Bath Christmas Market had been recognised by Visit England. A key aim was to manage the flow of visitors through the Market; he believed that adding units in a few key units would help with that. It would also enable more traders to be accommodated; this year 300 more applications had been received than could be accepted. He said that the Bath Christmas Market is a distinctively British and local market, with mostly locally-produced products, many of them handmade. A key objective is to support local business and to provide stalls for smaller, tabletop businesses. Adding chalets will increase footfall. Bath Tourism Plus is acutely aware of the impact of the Market on local businesses and residents. Consultation about this year's Market began in January. There would be no addition to the overall footprint of the Market as a result of this application and no additional disruption to traffic. The extra units would encourage visitors to circulate more and so improve the flow of people around the area. In reply to a question from the Chair he said that the Guildhall market was not part of the Christmas market, though it is referred to in the publicity for the Christmas Market, as are other attractions in Bath, such as the ice rink.

Mr Quinn put questions to the applicant.

Q: why are units being located in York Street?

A: it is a previously underutilised part of the Christmas Market footprint. There have never been chalets there before. Its use will ease pressure on Kingston Parade. York Street is already closed to traffic during the Market.

Q: Bog Island is used as a coach stop. There would also be vehicles delivering units to be installed and coming to take them away. This could cause access problems for emergency vehicles.

A: Bog Island will not be used as a coach stop during the Market or during the setting up and taking down periods. Avon Street will be used instead.

Mr Quinn stated his case. He said that he did not object to the Christmas Market per se. He was concerned about the impact on his own business of the siting of units in a narrow street and immediately opposite his premises. York Street was increasingly used as a loading bay, and damage resulting from vehicles mounting the pavement was clearly visible. He did not agree that coach access was well-managed. Owners of neighbouring businesses had told him that they also opposed the application, though they had not submitted representations. He noted that four of the letters of support attached to the Applicant's representation had identical wording. He said that during the Christmas Market it took about half an hour to cross from one side of the area to the other. The crowds deterred people from visiting his shop and he thought he might as well close during the Market period. York Street was already crowded during the Market, with people walking three-a-breast and he thought that the presence of units in the street would increase crowding. The Market itself lasted 3

weeks and setting-up and taking-down each took 2 weeks, resulting in the loss of 5 weeks', or about 1/10th of the year's, trading for him. He thought there needed to be a limit on the number of units and on where they were sited. He thought the Market lowered the ambience of the streets and make it hard to justify the claim that Bath was a high-class retail centre. It also made it difficult for deliveries to his shop, which often consisted of heavy, bulky items. Members put questions to Mr Quinn:

Q: your letter refers to objections from other businesses, but in fact yours was the only objection received.

A: the owners of neighbouring businesses have told me they object. Perhaps they feel it is not worth sending in objections because they think it is already a fait accompli.

Q: do you have any financial data to show the impact of the Market on your business?

A: not immediately to hand, but I am absolutely certain it is detrimental.

Q: you are sure that the placing of 6 units in York Street would have an adverse impact on the amenity of businesses and residents?

A: yes. York Street is already very congested during the Market and there would be additional access difficulties for emergency vehicles.

Q: would there be an increased risk to the safety of pedestrians?

A: not really.

The parties were invited to sum up.

Mr Quinn said that the Christmas Market had an adverse impact on his business. He urged the imposition of a limit to the number of units and where they could be located. He thought that the units proposed for York Street were too close to his front door.

Mr Brooks-Sykes said that the chalets in York Street would be sited on the pavement against the railings. He argued that, as there would be no parking in the street, there would be no access problems for emergency vehicles and that the ambience of the street would not be affected. He said that aim was to improve the flow of people and he submitted that the additional units in a previously unused area would have the effect of diluting congestion. There were no plans to increase the footprint of the Market. Bath Tourism Plus was working closely with First Great Western to try to smooth out the peaks and troughs of arrivals to the City. Although a week was allowed for setting-up and taking down, these were usually done in 3-4 days. There would a 24-hour hot line on which businesses and residents could report problems, e.g. with deliveries.

Ms Bunt said that the four identically-worded letters to which Mr Quinn had referred, were written by the same person, who happened to have several separate businesses in the City.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application.

Reasons

Members have had to determine an application for renewal of a Street Trading Consent for Bath Christmas Market ("BCM"). This application involves a proposed increase in the number of pitches from 155 in 2013 to 172 pitches for 2014. In

determining the application members have taken into account the Local Government (Miscellaneous Provisions) Act 1982, the Council's Policy on Street Trading and the Human Rights Act 1998.

Members heard oral representations from Nick Brooks-Sykes Chief Executive of Bath Tourism Plus who described the BCM as a key event bringing £36 million of income to Bath last year. He described BCM as important at generating trade particularly for hoteliers and B&Bs. He explained that BCM is a not for profit company seeking to minimise the amount that has to be funded by the Council. BCM needs to stay fresh, drive interest and be ahead of competition e.g. Cribbs Causeway, Cabot Circus, Salisbury. They continue to improve the visitor experience and said that it was widely reported that last year's market was regarded as the most successful and coach management is regarded as very successful now. He noted that BCM is the only market in England to have Visit England recognition and worthy of a Quality Mark. BCM has improved visitor flows around the site which is key to this application, e.g. extension to Abbey Gate Street. By adding a small number of units in key strategic areas this will increase the flow around site. There have been over 300 applications for stalls, more than ever. Priority is given to local handmade goods with a scoring system and it is a distinctly British market. It gives more local businesses the opportunity to be in the BCM Key focus of the BCM is to support local businesses so that smaller table top businesses could take up a shorter term on a stall. The aim of the new proposed stalls is to encourage people to discover areas that they had not previously been to e.g. Bath Street and likewise with York Street and to drive business and footfall to those areas which will benefit those businesses. There is no addition to the existing footprint or road closure and no additional disruption. The idea is to show the city in its entirety and encourage people to go all around the city. The application seeks to address compression of traffic on Kingston Parade and dilute it out by having chalets outside of the Friends' Meeting House on York Street and it will direct people there from Kingston Street.

Members heard oral representations from Aidan Quinn of Beaux Arts who made it clear that he is not objecting to the BCM per se and acknowledged that it brings a lot of market to the town. His objection related to the proposed 6 units opposite his shop on York Street. He described that where the proposed stalls will be on York Street will create a distance akin to a narrow road from the shop. Mr Quinn says that the coach access is not being managed well. In terms of flow of people it takes half an hour to get from one side of the market to another. When the BCM is not operational he said there is room for about 3 people abreast to walk through from the Abbey to York Street and does not accept that the proposed stalls on York Street will alleviate the crowding. Mr Quinn contended that there has to be some kind of limit to the number of chalets. He said that the ambience of the street is not enhanced but Mr Quinn says it ruins his business and produces lots of people. Mr Quinn accepted that Bath is composed of people looking for different markets. He also said that it is hard to get deliveries and get them into his shop when the market is operational.

Mr Quinn in summing up conceded that on balance the BCM brings a lot of visitors and he is not against it in principle but he said he may as well close his business over the period and his view is there should be a limit to the number of stalls.

In summing up Mr Brooks-Sykes said that the chalets on York Street would be on the pavement right up against railings and take up less space than the parking which is currently allowed so in fact there would be more space. Access issues and

ambulance issues will not be a problem. They are trying to encourage people to attend the market on weekdays and dilute the concentration of stalls to improve flow. He acknowledged that there is a limit to the number of stalls that Bath can take. He stated that deliveries to businesses will always be accommodated and there is a 24 hour hotline. He accepted that a small number of businesses may be negatively affected by the BCM and Beaux Arts may be one of them.

Members were careful to only take into account matters of relevance and to disregard matters which were irrelevant, with specific regard had to the Council's policy on Street Trading Consents.

In reaching a decision Members took account of all the relevant oral and written representations and balanced the competing interests of the applicant and the interested party. Members saw fit to grant the street trading consent as proposed for the 172 individual units and the 10 catering units. They noted the objections raised by Mr Quinn with regards to the 6 units proposed on York Sheet but took the view that there was no material reason, having regards to paragraph 5.3 of the Street Trading Policy, as to why the consent should not be granted.

Consents subject to the Standard Conditions and with the additional specific conditions, such as are reasonable and necessary.

36 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT COEUR DE LION, 17 NORTHUMBERLAND PLACE BATH BA1 5AR

Applicant: Alan Morgan, represented by Michelle Spence (manager)

Objector: Highways Department, Bath and North East Somerset Council

Councillor Symonds declared an interest by reason of his acquaintance with Alan Morgan. He said that he did not believe his judgment would be affected by this.

The objector was not represented. Ms Spence confirmed that she understood the procedure to be followed.

The Public Protection Officer summarised the report and invited the Sub-Committee to determine the application.

Ms Spence stated the case for the Applicant. She said that the Applicant wished to expand the tables and chairs area to increase the comfort of customers. She believed the gap between the enlarged tables and chairs area and the premises opposite would be 2.5-3 metres. She was puzzled that a hearing was necessary, given that the guidance was that there should be a minimum gap of 2 metres.

Following an adjournment the Sub-Committee **RESOLVED** to grant the application.

Reasons

Members have had to determine an application to place 3 tables along with appropriate seating on the highway to the front of the premises at 17 Northumberland Place, Bath. In doing so they took account of the Highways Act

1980 and the Human Rights Act 1998 and balanced the representations from the objector against the application and its background.

Members noted that the application is for renewal of the tables and appropriate seating to the front of 17 Northumberland Place, Bath with times permitted remaining the same, i.e. daily from 10:00 to 23:30 hours. The change since the last permit was issued is an increase in size of the area for placing the tables and seating from 1.1m x 4.5m to 1.5m x 4.5m. In reaching a determination members had to decide whether the application was likely to obstruct the free passage of pedestrians, cause a public nuisance in highway terms or be a hazard in its real sense.

Members heard oral representations from Michelle Spence who is the manager of the Coeur De Lion. Ms Spence described that what was proposed was a slight extension to the terms of the previous licence and intended to improve the comfort of customers. Ms Spence said she had measured the distance and she thought there was 2.5m to 3m from the outer edge of the proposed licensed area to the wall of the opposite shop and noted that this was in excess of the guideline of 2m indicated by the Highways Department.

Members had regard to the written objection from the Highways Department but noted that Mr Sperring had left before the application was heard.

Members decided to grant the licence as proposed on the basis that they did not find that the application was likely to obstruct the free passage of pedestrians, cause a public nuisance in highways terms or be a hazard in its real sense.

Authority is delegated to the public protection officer to issue the permit with the attachment of the standard terms and conditions.

37 LICENSING PROCEDURE - DRIVER APPLICATION AND CONVICTION

Members noted the procedure to be followed for agenda items 12 and 13.

38 EXCLUSION OF THE PUBLIC

RESOLVED that, having been satisfied that the public interest would be better served by not disclosing relevant information, in accordance with the provisions of Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for agenda items 12 and 13 because of the likely disclosure of exempt information as defined in paragraphs 1 and 2 of Part 1 of Schedule 12A of the Act, as amended.

39 APPLICATION FOR HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE: MR JKH

The Sub-Committee considered the report, which sought determination of Mr JKH's application for the grant of a combined Hackney Carriage/Private Hire Driver's licence.

Mr JKH was present. He confirmed that he understood the procedure for the hearing.

The Senior Public Protection Officer presented the report and stated that as part of the application process a Disclosure and Barring Service check was undertaken, which had revealed previous convictions. He circulated the Disclosure and Barring Service check and references for Mr JKH and his personal statement. The applicant and Senior Public Protection Officer withdrew from the meeting while Members took time to consider these documents.

Mr JKH put his case and was questioned. He also made a closing statement.

Following an adjournment it was

RESOLVED that Mr JKH be granted a combined Hackney Carriage/Private Hire Driver's licence.

Reasons

Members have had to determine an application for the grant of a combined Hackney Carriage/Private Hire Driver's Licence and in so doing have had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, the Human Rights Act 1998 and case law. Members had to consider whether the applicant was a fit and proper person and asked themselves whether they would allow their son, daughter, spouse, partner or any one they cared about to travel alone in a vehicle driven by the applicant.

In making a determination Members took account of the applicant's oral representations, written reference and statement and balanced these against the information provided by the Disclosure and Barring Service which showed the applicant had three previous convictions the first of which was from 1980 and the last in 1992. In all the circumstances members found that the applicant was a fit and proper person and granted the application for a combined hackney carriage/private hire driver's licence.

40 CONSIDERATION OF CONVICTION OBTAINED:- MR KH

The Sub-Committee considered the report which sought consideration of a conviction by KH during the term of his Hackney Carriage/Private Hire Driver's Licence.

The Licensee was present and confirmed that he had read and understood the procedure for the meeting.

The Senior Public Protection presented the report and circulated the following documents to the Sub-Committee:

1. A letter to KH from his legal representatives;
2. A letter from KH's legal representatives to Bristol Magistrates Court;
3. Minutes of a previous meeting of the Sub-Committee at which KH had been given 4 penalty points for failing to declare a conviction during the term of his licence.

The Licensee and the Senior Public Protection Officer withdrew from the meeting for Members to have time to consider these.

When the Sub-Committee reconvened, KH made a statement and was questioned by Members. He then made a closing statement.

Following an adjournment, it was **RESOLVED** that KH's licence be suspended for 6 months.

Reasons

Members have had to determine what action, if any, to take against the licensee having obtained a conviction during the duration of his licence.

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, Human Rights Act 1998 and case law. Members noted that case law stated hearsay evidence is admissible, the merits of a conviction must not be reviewed or re-opened, the economic wellbeing of the applicant is irrelevant and when considering any action the protection of the public is of the utmost importance. Accordingly Members had to decide whether the licensee continued to be a fit and proper person to hold a licence taking into account all the circumstances including his driving history and character.

Members heard oral representations from Mr K H, read letters from his solicitors in relation to the conviction in question and read his statement. Mr K H indicated that he regrets his actions on the day in question and that it has caused him a lot of aggravation. He explained that his ASBO had been extended following that conviction and that he is subject to Supervision as part of his sentence. He told members that he had completed a psychology course in Bath as part of his Supervision which has enabled him to take on board the issues and co-operate with the Probation Service. When asked by members whether or not he was a fit and proper person Mr K H responded by saying that he had made serious attempts to stay away from the area in question and this is borne out by the fact that the one time he went through the excluded area he was caught. He describes the breach as a spur of the moment decision and was not pre-meditated. He informed members that he has made a conscious decision to avoid getting anywhere close to the excluded area and it is in his mind. When asked what he would do if a fare wanted him to go into the excluded area or the most economic route was to go through the excluded area he said he would have to drop them as close as he could and explain why he could not go into the area.

In summing up Mr K H said it is an ongoing problem linked to depression which is why he completed the course and has further courses to do. He said that he does not go to the area at all now and points to the fact that he was picked up so quickly on the occasion in question. Mr K H noted that he thinks the patience of Bristol Magistrates' Court had run out and that so far they had been lenient.

The offence for which the conviction had been obtained was carried out when Mr K H was using his licenced vehicle. Members noted that this was the second occasion during the course of his licence where he had received a conviction and during the course of the last year.

The members noted that the Council's policy was not of assistance on this occasion but had applied the "fit and proper" test.

The members observed that on the last occasion where Mr K H appeared before the committee it would have been disproportionate to suspend or revoke Mr K H's licence. However, on this occasion based upon what members had heard and read members determined to suspend Mr K H's licence for 6 months on the basis that his conduct had not been that of a fit and proper person, but revocation is seen as disproportionate. Members take the view that a period of suspension will deter Mr K H from misconduct in the future and bearing in mind his further period of Probation Supervision, where he told the committee he would be undertaking further courses to assist him to overcome his problems, he should once again be a fit and proper person.

The meeting ended at 2.34 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services