

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Tuesday, 13th May, 2014, 10.00 am

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

Officers in attendance: Alan Bartlett (Principal Public Protection Officer), John Dowding (Senior Public Protection Officer), Michael Dando (Public Protection Officer), Kirsty Morgan (Public Protection Officer), Shaine Lewis (Principal Solicitor) and Carrie-Ann Rawlings (Senior Legal Adviser)

147 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer read out the procedure.

148 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

149 DECLARATIONS OF INTEREST

The Chair declared an other interest in relation to agenda item 11 (application for a premises licence for Bath Rugby Football Club) because the two witnesses to be called by the Other Person were well known to her.

150 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

151 TAXI LICENSING PROCEDURE - APPROVAL OF VEHICLE

Members noted the procedure to be followed for the next part of the meeting.

152 APPROVAL OF VEHICLE FOR PRIVATE HIRE - MR D SCARAMANGA

Applicant: Mr D Scaramanga

The Senior Public Protection Officer presented the report. He explained that this application had been brought to the Sub-Committee because the age of the vehicle (7 years and 11 months) fell outside the Council's general policy that a private hire vehicle should not be more than 5 years old.

The Sub-Committee, accompanied by the Principal Solicitor and the Senior Public Protection Officer, adjourned to inspect the vehicle. After the Committee had reconvened, the applicant stated his case. He said that the vehicle was fully accessible to wheelchair users and had a hearing loop and aids for those with impaired vision. He said that only 2% of the private hire vehicles in Bath were fully accessible to disabled users, so that this vehicle would be a valuable addition to the facilities available to them. In reply to a question from a Member, he said that that the vehicle had formerly been in service as a taxi in Swindon. In his closing

statement he said that the cost of fully accessible vehicles was very high, so that not many were being brought into service.

Following a further adjournment, the Sub-Committee **RESOLVED** to grant the application.

Reasons

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. Having inspected the vehicle Members consider it is suitable in size, type and design to be granted a licence and delegated authority to the Licensing Officer to issue a Private Hire Vehicle licence subject to the 'taxi' signs being removed and the necessary safety inspections and certification.

153 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 the following item of business 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.

154 DRIVER LICENSING PROCEDURE - COMPLAINT HEARING

155 CONSIDERATION OF CONVICTION OBTAINED - CJ

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

The Licensee was present and accompanied by her father. She confirmed that she 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. An email from a member of the public making a complaint against CJ's conduct while driving her licensed Hackney Carriage.
2. A statement from CJ to the Public Protection Service.
3. A letter from the Police to the complainant advising her of CJ's conviction at Bath Magistrate's Court.

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

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

Following an adjournment, it was **RESOLVED** that 4 penalty points be added to CJ's licence.

Reasons

Members have had to determine whether to take any action against the licensee having obtained a conviction during the duration of her licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members heard that the licensee had been convicted of a public order offence arising from a verbal altercation with a member of the public whilst driving her licensed vehicle. Members noted her representations, written statement and although taking a dim view of the offence gave her credit for disclosing the offence in compliance with the terms of the policy, credit for her driving history and noted the genuine remorse shown.

Whilst Members found her behaviour fell short of that expected from licensed drivers they resolved to add 4 points to her licence.

156 LICENSING ACT 2003 - PROCEDURE FOR APPLICATION FOR NEW PREMISES LICENCE

The Chair drew attention to the procedure to be followed for the next item of business.

157 APPLICATION FOR A PREMISES LICENCE FOR BATH RFC, LAMBRIDGE SPORTS GROUND, LONDON ROAD, BATH BA1 6BD

Applicant: Bath Rugby Football Club, represented by Mark Edwards (proposed Designated Premises Supervisor)

Other Person: Susan Traill

Witnesses for the Other Person: Alex Schlesinger and David Dunlop

The parties confirmed that they had received and understood the licensing procedure.

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

Mr Edwards stated the case for the applicant. He explained that he was currently the Chairman of Bath RFC, which was the amateur, not the professional Bath club. Bath RFC had returned to Lambridge after a 10-year absence, during which the Lambridge ground had been used exclusively for training for the professional club. He thought that the Lambridge club ground was probably the only rugby club ground in the country without a bar. All the other grounds he visited were able to offer hospitality and the club wanted to be able to do that at Lambridge. The alternative of having a club licence had been discussed with the Police, but the difficulties of administering it had been pointed out. As there was no admission charge, it would be

difficult to distinguish members from non-members; it therefore appeared simpler to have a premises licence. There was no intention of running a pub, or of using all the hours applied for. The application stated how the club intended to further the licensing objectives. He noted that there was a great deal of comment in the representations about the possibilities of drug sales and use at the premises, but the fact was that drugs were simply not tolerated in rugby. Most members of the club were aged 7-18, and adult members were mostly the parents of younger members. The club provided a well-ordered family environment. Strict controls were in place. Attendances were in the low 100s, not in the 1000s. A starting hour of 06.00 had been applied for because international matches in the southern hemisphere were often broadcast at this time, and the club would like to be able to provide hospitality for such events, without having to keep applying for Temporary Event Notices (TENs).

In response to questions from Members Mr Edwards stated:

- 3 TENs had been applied for in the past 6 months; in a normal season he expected that there would be a need for about 4 TENs a week
- full breakfast was available at early-morning events
- extensive discussions had taken place with the Police about the appropriate hours to be applied for; a high degree of flexibility was required because some internationals were retimed at short notice, which mean that it might not be possible to provide hospitality for a particular event at the club; it was also planned to have a regular Friday event at the club; the hours applied for would give the maximum flexibility, but there was absolutely no wish to serve alcohol from 06.00 to 23.00 every day

Ms Traill asked why off-sales had been applied for. Mr Edwards explained that this was simply to allow customers to take drinks to parts of the premises that were outside of the licensed area, such as the side of the pitch and the car park. Ms Traill asked how people who wandered into the ground or were under the influence of alcohol would be dealt with. Mr Edwards replied that in a club of 400 members a stranger would be noticed very quickly and that people who were acting in an unacceptable manner would be shown the door. He said that the club was a private premises, not a public park. No problems had been experienced at events for which TENs had been obtained. The Principal Solicitor pointed out that the club was described as a private premises on the application and that it was an offence to sell alcohol to intoxicated people.

Ms Traill stated her case. She said that lived quite close to the ground and that her concerns were not based on any problems that were currently occurring. She was objecting to such a wide-ranging licence, which could be passed on to another licence holder in the future. She wondered why the club was applying to sell alcohol for 18 hours a day if they did not intend to do this. The fact that the licence applied for did not require membership changed the situation and the outlook for the future. People who had been drinking could sometimes be very threatening. Residents of Grosvenor Place were already suffering from litter and broken glass left by drinkers. She was concerned about increased traffic congestion, which, among other things, would cause problems for the emergency services. There was a bus stop directly

opposite the ground at which there were sometimes large numbers of children, who could be drawn by the excitement surrounding events at the club and cross a very busy road. She was able to hear the noise from events in her flat and at her allotment. She didn't mind the occasional noise late at night, even though it kept her awake, but it would be unbearable if it happened every day. She was concerned about the possibility of drugs at the club. She felt the licence was quite unsuitable for the nature of the premises. She called her two witnesses.

Alex Schlesinger said that the licence applied allowed the premises to do practically anything, facilitating the creation of a social as well as sporting venue. This was not appropriate in a residential district and near a very busy road. The district was already suffering the impact of alcohol-related problems, particularly on young people. A local convenience store had had to be warned about selling alcohol to young people. Most users of the club would arrive by car, exacerbating traffic problems. It was perverse that at a time when alcohol misuse was a national concern a sports club should be seeking a licence to sell alcohol 18 hours a day.

David Dunlop said that it had been stated that the club grounds were private land. Yet the notice advertising the licence application had been fixed within the club grounds; it should have been fixed to the gate, where it would have been more accessible. No notice had been given to residents about the application. In the past the Rugby Club had communicated with residents about developments; their failure to do so on this occasion had naturally aroused suspicions. Residents had been alarmed when they had seen the hours applied for and the fact that it was not a club licence. The applicants had consulted the Police, but they should have consulted local residents as well. There was a possibility of noise pollution from the premises. There was a risk that intoxicated people could fall in the river. He noted that the proposed Dyson premises had been prohibited from admitting underage people because the land was subject to flooding; the same was the case here. There had been two drug and alcohol-related deaths in London Road in the past two years. It was somewhat naïve of Mr Edwards to say that there was a strict ban on drugs at the club because some Bath Rugby professional players had been charged with drug offences and it was impossible to control what five hundred people brought into the ground.

The Chair asked the Public Protection Officer to comment on the location of the notices advertising the application. She replied that they were clearly visible from the highway.

In reply to questions from Members Ms Traill stated:

- the previous club licence had not resulted in problems for residents; the club and its members were good neighbours
- drug problems would be more likely to arise from outsiders than club members
- the ground was easily accessible to the public; people walked their dogs there

The Principal Solicitor advised that highways issues and the safety of people away from the premises were not relevant to applications under the Licensing Act

In her summing up Ms Traill said that the hours applied for were too long and posed a risk to residents if the premises changed hands. She thought off-sales were unnecessary.

The Chair asked the Public Protection Officer to comment on the application for off sales. The Public Protection Officer explained that the area for which a licence was sought was less than the total area of the club grounds. If there were no provision for sales for consumption off the licensed premises, it would not be possible for people to take drinks to portions of the premises outside the licensed area. She noted that the applicant had offered a condition about the use of plastic glasses only in the outside area.

Mr Edwards summed up. He said there was no intention to operate an off-sales business. The only purpose of the off-sales provision was to allow people to take drinks to areas outside the licensed area, such as the car park. He acknowledged that there was the potential for non-members to enter the premises, but, he submitted, strict controls would be in place. He did not believe that there would be a significant increase in the number of coaches and cars coming to the premises. The purpose of applying for the hours of 06.00 till 23.00 was to provide flexibility and obviate the need for repeated applications for Temporary Event Notices.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application as applied for.

Reasons

Members have today determined an application for a new premises licence at Bath Rugby Football Club, Lambridge, Bath. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy and the Human Rights Act 1998.

Members are aware that the proper approach under the Licensing Act is to be reluctant to regulate in the absence of evidence and must only do what is appropriate and proportionate in the promotion of the licensing objectives based on information before them. Members were careful to disregard representations relating to public safety of those not on the premises, traffic and environmental issues, planning and did not speculate on what may or may not happen in the future should a licence be granted.

In reaching a decision Members were careful to take account of all the relevant oral and written representations and balanced the competing interests of the applicant and the interested party.

The applicant stated the club had been used for over 50 years and only in its recent history as a training ground for the professional club. The amateur club had now returned to the site and was hosting matches although mostly as a youth based club. However it would like to provide the usual facilities associated with a rugby club so people could have the option of a drink during or after matches. It was not the case that the application would lead to binge drinking as the club is family orientated and would be for the use of club members, visitors and guests rather than a public house. It was felt that given the club's location and the scope of the application it was

unlikely to have an effect on residents and very unlikely that there would be any drugs on the premises. It was said that the club were operating using TENs at present which although proving successful were limited in number and did not give the club the flexibility of a licence going forward.

The interested party accepted the club and its membership are very good neighbours. However, they feared the scope of the application was too wide and could be transferred to someone not as family orientated leading to an increase in public nuisance and disorder in the form of drunkenness, noise and disagreements between users of the premises and drug dealing. It was further stated that there would be an increase in traffic risks, a risk of people falling in the river and noise from late night events particularly if held in a marquee. It was therefore an unsuitable site for such activities.

Members note the police had not objected to the application and had assisted the club in formulating this application. In all the circumstances Members found there was nothing in the application leading them to think there would be a detrimental effect on the licensing objectives and therefore grant the application with conditions consistent with the operating schedule. Authority was therefore delegated to the Licensing Officer to issue the licence.

158 LICENSING SUB COMMITTEE MISCELLANEOUS PROCEDURE

The Chair drew attention to the procedure to be followed for the next item of business.

159 PRIVATE SHOP

Applicant: the Private Shop, represented by Mr Clive Sullivan (Management Consultant), Mr Colin Mason (Director), Miss Janice Singleton (Licensing Administrator)

Representation and Petitioners: Miss Jo-Ling Chew (making representation), Ms Charlotte Barnes (Petitioner), Ms Jona Wiskowski (Petitioner), Mr John Smythe (Petitioner)

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

Mr Sullivan submitted that the procedure to be followed for this item was not compliant with a High Court judgement, that the objectors should not be present during the hearing of the application and should not be able to question the applicant. The Sub-Committee adjourned to consider his objection. When the Sub-Committee had reconvened, the Chair drew Mr Sullivan's attention to the statements in the Council's procedure that "the hearing will take the form of a discussion" and that "formal cross examination will be discouraged and, should they be necessary, supplementary questions allowed for clarification purposes only". She said that she would allow the objectors to remain present and question the applicant after the statement of their case, but would not allow cross examination. Mr Sullivan accepted this.

Mr Sullivan submitted that the Court of Appeal had distinguished between an application for renewal and an application for grant and that in the case of a renewal due weight must be given to the fact that a licence has been granted. He said that there had been a sex shop on this site for thirty-five years. He further submitted that the Act distinguishes between mandatory grounds for refusal and discretionary grounds for refusal, and that in turn the discretionary grounds were subdivided into the suitability of the applicant and the suitability of the premises. As far as the suitability of the applicant was concerned, the Private Shop owned one hundred premises in the UK and had never received a conviction and had no prosecutions pending against it. Turning to the suitability of the premises, he submitted that to apply one of the discretionary grounds there had to be a more than ordinary degree of the condition to which the ground referred. For example, it was not sufficient reason to refuse an application because the premises would be passed by children, as this was usually the case with all such premises. He cited the statement of a Minister in the House of Lords to the effect that it was not for Local Authorities to decide whether or not sex shops should be permitted; Parliament had decided that they should be. The Private Shop was a legal operation selling legal products. He submitted that the only objection made by the objectors that the Sub-Committee could take into consideration was the proximity of schools to the shop. He submitted that in fact the schools were at some distance and pointed out that it was an offence to allow underage people to enter the shop. In conclusion he said that by granting the licence the Council kept the premises under control by being able to regulate its opening hours, its appearance and its staff. He requested the Sub-Committee to renew the licence.

Miss Chew put questions to Mr Sullivan. She asked whether Mr Sullivan considered it appropriated that a sex shop should be located in the same street as a charity to help victims of sexual trauma. Mr Sullivan replied that he suspected that the Private Shop had been in its present location for longer than the charity had. The Chair ruled that another question was not legally relevant.

Miss Chew stated her case. She said that the shop was close to two schools, and Oldfield Park Infants was only 453ft away. Its location so close to schools could give the impression to young people that pornography was acceptable and might encourage them to look at it at a young age. Young people might be able to circumvent the age restriction on entry to the shop or persuade adults to buy material for them. A number of Miss Chew's statements were ruled as legally irrelevant by the Chair. The Chair advised Miss Chew that she could only raise issues arising from the location of this specific establishment and not those relating to pornography in general.

In his closing statement Mr Sullivan submitted that the only relevant issue raised by the objectors was the proximity of the schools. He suggested that that they were sufficiently distant as not to make this an issue. He pointed out that no objections had been received from the schools themselves and that in fact that they had never made any objections to the premises. He urged the Sub-Committee to allow the Council to continue to exercise control over the premises by granting the renewal.

Following an adjournment the Sub-Committee **RESOLVED** to renew the licence of the Private Shop for one year.

Reasons

Members have today determined an application to renew a premises licence at The Private Shop, Lower Bristol Road, Bath. In doing so they have taken into consideration schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982, the Council's Policy and the Human Rights Act 1998.

The applicant made a procedural point relating to the apparent adversarial nature of the proceedings. Turning to the application however, it was said the company was fit and proper in that it had not been convicted of any offences and there were none pending. They further stated that the grounds of the objection appeared to be based on policy and morals and were not matters to be considered by the committee. The conditions attached safeguard children and residents and were appropriate to the premises which had operated without concern for some 30 years.

The objections said a renewal would affect families moving to the area, have a negative impact on culture, objectify women and make it appear abuse was acceptable in relationships. Further the premises were close to schools which in turn could lead to children being interested in pornography.

Members were careful to note that the procedure to be followed clearly stated the process was not adversarial but rather designed to be a conversation where questions could be asked stopping short of formal cross examination.

Members were mindful that the application must be considered on its merits, in the context of schedule 3 of Local Government (Miscellaneous Provisions) Act 1982 and with regard to the importance of consistency in the decision making process.

Members noted that these premises had operated since 1994 without complaint, breach of condition and that there had been no change in the extent, location or nature of the business. Whilst Members acknowledged the objection they placed little weight on it and therefore the application was granted with the attachment of the standard conditions. Authority was delegated to the Licensing Officer to issue the licence.

The meeting ended at 12.57 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services