

## **BATH AND NORTH EAST SOMERSET COUNCIL**

### **LICENSING SUB-COMMITTEE**

Tuesday, 17th December, 2013, 10.00 am

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

**Officers in attendance:** Enfys Hughes, Kirsty Morgan (Licensing Officer), Michael Dando (Public Protection Officer), Shaine Lewis (Principal Solicitor) and Simon Elias (Legal Adviser)

#### **68 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services read out the procedure.

#### **69 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

Councillor Gabriel Batt sent his apologies, Councillor Anthony Clarke was his substitute.

#### **70 DECLARATIONS OF INTEREST**

There were none.

#### **71 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

There was none.

#### **72 MINUTES**

There were no minutes to be considered at the meeting.

#### **73 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(s) of business because of the likely disclosure of exempt information as defined by paragraphs 1, 2 and 3 of Part 1 of Schedule 12A of the Act, as amended."

#### **74 LICENSING PROCEDURE - HACKNEY CARRIAGE AND PRIVATE HIRE DRIVERS COMPLAINT HEARING PROCEDURE**

**RESOLVED** that the procedure for this part of the meeting be noted.

#### **75 CONSIDERATION OF INFORMATION AND COMPLAINTS RECEIVED:- MR A V S**

The Sub-Committee considered the report which sought consideration of information and complaints received regarding the behaviour of Mr S during the term of his

hackney carriage/private hire driver's licence. Then to consider what action, if any, should be taken.

Mr S was present. The Chair read out the procedure to ensure Mr S understood the process of the meeting.

The Public Protection Officer presented the report and stated that he had some photographs of screen shots from Mr S's mobile phone of texts sent to a female. The Public Protection Officer circulated the photographs. The applicant and the officer withdrew from the meeting while Members took some time to consider these.

Mr S put his case and was questioned as to what had happened. Mr S then made a closing statement.

Following an adjournment it was

**RESOLVED** that the hackney carriage/private hire driver's licence in respect of Mr AVS be revoked.

#### Reasons for decision

Members have had to consider what action to take, if any, as a result of complaints received against Mr AVS the holder of a combined hackney carriage and private hire driver's licence.

In doing so, they took account of the Local Government (Miscellaneous Provisions) Act 1976, the Human Rights Act 1998, Home Office guidelines and the Council's adopted policies.

Members had to consider whether Mr S remained a fit and proper person to hold a drivers licence and therefore asked themselves whether they would allow their son, daughter, spouse, partner or anyone they cared about to travel alone in a vehicle driven by Mr S.

Members heard that Mr S had been the subject of the following complaints: On 12 October 2012 allegations were made that he made physical advances towards a lone female passenger. On 5 December 2012 Mr S was arrested on suspicion of kidnap following an allegation that a female was taken against her will. On 6 August 2013 the police were called to an incident over a phone lost in Mr S's taxi by one of two female passengers. Mr S found the phone, returned it but demanded further payment claiming he had restarted the taximeter. On arrival the police noted the females surrounded by three large male taxi drivers. On 28 October 2013 the Licensing Authority was notified of an allegation that Mr S pressurised a lone female to get into his car then pestered her for her phone number following which he texted and called her. Members noted those text messages were retained by the complainant who brought these to the attention of the Taxi Company and police. Members also noted that that this incident left the complainant feeling 'totally freaked out' and uncomfortable when alone in her home given Mr S knew where she lived.

Whilst the Crown Prosecution Service decided not to take matters further Members noted the following correspondence from the Licencing Officer. On 8 January 2013 Mr S was advised a report had been received from the Police regarding his conduct,

the matter had been placed on file and any further complaint might lead to him appearing before the Licensing sub-Committee. On the 16 September 2013 Mr S was issued with a final warning as a result of a further complaint. On 16 October 2013 Mr S was advised in writing that due to an allegation relating to kidnap, he was referred to the Licensing Sub-Committee to determine whether he continued to be suitable to hold a licence. Since that letter the Authority had been notified of a further incident of inappropriate behaviour towards a lone female and on 7 November 2013 Mr S attended Council offices to make a statement.

Mr S stated he did not make any advances towards females. On 5 December 2012 he recalled some confusion over the destination and that they all got out of his taxi somewhere in Oldfield Park. With regard to the incident on 4 October 2013 Mr S accepted he offered a female a lift and insisted she gave him her phone number. He also accepted he phoned and texted her a number of times.

Members were very concerned by the nature of the complaints against Mr S. Whilst he was not convicted, or cautioned, for any offence Members took these complaints extremely seriously. Mr S had been warned on previous occasions and each of these three additional matters showed a pattern of unacceptable behaviour. Members found it unacceptable for a licensed driver to approach a lone female and, having persuaded her to get into his car, insist she give him her phone number. Members therefore had doubts about Mr S's fitness particularly having had the opportunity of reading the content of the text messages which was not in dispute. For example '...I felt so pressured into giving you my number. You scared me last night. Please delete my number.' Members further noted that whilst Mr S accepted it was not normal behaviour it was not until he was confronted by his manager and the Licensing Officer that he deleted the complainant's number from his phone.

Licensed drivers provide a valuable public service and in particular for lone, vulnerable females. Members consider that the behaviour demonstrated by Mr S called the Licensed Taxi trade into disrepute and, moreover, Mr S's fitness to continue to hold a licence. Accordingly, as Members' priority was public safety, Mr S's licence was revoked. This step was taken because of the nature and seriousness of the allegations resulting in Members not being satisfied that their son, daughter, spouse, partner or anyone they cared about would be safe traveling alone in a vehicle driven by Mr S.

Therefore the hackney carriage/private hire driver's licence of Mr S was revoked.

## **76 RETURN TO OPEN SESSION**

The meeting returned to open session.

## **77 LICENSING PROCEDURE -HEARING AN APPLICATION FOR A NEW PREMISES LICENCE OR FOR A VARIATION OF A PREMISES LICENCE**

**RESOLVED** that the procedure for this part of the meeting be noted.

## **78 APPLICATION FOR A PREMISES LICENCE FOR THE POST OFFICE, PENSFORD HILL, PENSFORD, BRISTOL, BS39 4AF**

The Sub-Committee considered the report which sought determination of an application for a new premises licence, under Section 17 of the Licensing Act 2003, in respect of the Post Office, Pensford.

The applicant Mr Patel was present with his agent Mr Leahy. The applicant confirmed he had read and understood the procedure for the meeting.

The Public Protection Officer presented the report and explained that the application was for:

Sale of Alcohol for consumption off the premises:

|                   |                |
|-------------------|----------------|
| Monday - Saturday | 08:00 to 22:00 |
| Sunday            | 08:00 to 20:00 |

and opening hours:

|                   |                |
|-------------------|----------------|
| Monday - Saturday | 08:00 to 22:00 |
| Sunday            | 08:00 to 20:00 |

The Public Protection Officer continued to explain that the application had been served on all appropriate responsible authorities and two representations had been received from local residents in respect of crime and disorder and public nuisance.

The applicant's agent presented the case and explained that Mr Patel currently ran a similar convenience store in Whitchurch and had bought the freehold of the premises and wished to add the sale of alcohol at the store. He stressed it was the only convenience store in the village. The agent stated that there were no restrictions on trading times and they had offered some conditions on the operating schedule.

In response to questions the applicant or his agent made the following points:-

- the applicant had done some research prior to purchase and since and as it was the only convenience store in the village wanted to add alcohol and be able to open later in the future if he wished,
- the applicant sold alcohol at his Whitchurch store and there had been no issues,
- it was the only convenience store and there were three public houses.

The Public Protection Officer stated that neither of the two residents who made representations were present and no representations were made by the responsible authorities.

The applicant's agent was invited to sum up. In respect of the representations he stated that the impact on traffic and noise was referred to but there was no evidence of this. Traffic would tend to be local and the hours were reasonable for a convenience store. Mr Patel added that he wished to enhance what was on offer for sale to local customers from his shop and believed one objection was from another business. Relating to public safety, he stated that Pensford tended to have older residents and youngsters were in the minority. He agreed it was a busy road but

people already parked there for the pub and shop. He added that many local residents wanted him to be an off licence.

The Legal Adviser stated that road traffic matters were irrelevant to the application and so should be disregarded and there was no objection on public safety grounds.

Following an adjournment it was

**RESOLVED** that delegated authority be given to Public Protection Officers to issue a premises licence in respect of The Post Office, Pensford, as applied for and with conditions consistent with the operating schedule.

Members have today determined an application for a new premises licence at the Post Office Pensford. In doing so they have reminded themselves of the Licensing Act 2003, Statutory Guidance, the Council's Statement of Licensing Policy and the Human Rights Act 1998.

Members were aware that the proper approach under the Licensing Act was to be reluctant to regulate in the absence of evidence and must only do what was appropriate and proportionate to promote the licensing objectives based on the evidence before them. However, in reaching their decision Members took account of relevant representations, disregarded irrelevant representations and were careful to balance the competing interest of the Applicant and Interested Parties.

Members heard the applicant had acquired the Post Office in Pensford and would like to sell alcohol products to supplement existing lines. The business would be family run and the family would live in accommodation above the premises becoming part of the local community. The applicant suggested a number of steps to promote the licensing objectives in the operating schedule and these would form conditions on any licence.

Members noted that whilst two representations were received there were none from Responsible Authorities. However, references to opening hours and road traffic were disregarded as these are irrelevant. Members noted that whilst the representations made reference to crime and disorder no evidence was presented connecting current levels of crime and disorder to the sale of alcohol in Pensford. Accordingly it was difficult to envisage this premises giving rise to an increase in alcohol related crime and disorder or indeed public nuisance.

In the circumstances Members found that the grant of a premises licence at this village convenience store would not have a detrimental effect on the licensing objectives and delegated authority to the Public Protection Officer to issue a licence with conditions consistent with the operating schedule.

The meeting ended at 11.15 am

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**