

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

### **LICENSING SUB-COMMITTEE**

Tuesday, 3rd May, 2016, 10.00 am

**Councillors:** Paul Myers (Chair), Mark Shelford and Caroline Roberts

**Officers in attendance:** Carrie-Ann Evans (Senior Legal Adviser), John Dowding (Senior Public Protection Officer) and Terrill Wolyn (Senior Public Protection Officer)

#### **159 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **160 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **161 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **163 MINUTES: 19TH APRIL 2016**

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

#### **164 TAXI PROCEDURE**

The Chair drew attention to the procedure to be followed for agenda items 8-11.

#### **165 EXCLUSION OF THE PUBLIC**

The Committee 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, **RESOLVED** that the public be excluded from the meeting for the following four items of business and the reporting of the meeting be prevented under Section 100A(5A) 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.

#### **166 APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE: MR AUA**

Mr AUA confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report and provided Members with copies of a DBS certificate, a statement from the applicant and two references

given on his behalf. The hearing was adjourned to give Members time to study these documents.

After the meeting had been reconvened, Mr AUA stated his case and was questioned by Members. He made a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** to grant Mr AUA a combined Hackney Carriage/Private Hire Driver's Licence on the basis that he was a fit and proper person.

#### Decision and reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's 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.

In making a determination Members took account of the applicant's oral representations, his statement, references and balanced these against the information contained in the Disclosure and Barring Service report.

Members noted that Mr A had remained conviction free for the period anticipated in the Council's Policy however, as he has convictions on his record his application is deemed contentious. Members formed the view that Mr A had learned from his past mistakes and showed genuine regret for his actions. Members were satisfied that Mr A would be able to conduct himself appropriately if faced with a confrontational situation now and Members find him a fit and proper person to hold a combined Hackney Carriage/Private Hire driver's licence.

#### **167 APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE: MR RCP**

Mr RCP was accompanied by a friend. He confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report and provided Members with copies of a record of convictions from the applicant's country of origin, a statement from him and a reference. The hearing was adjourned to allow Members time to study these documents.

Mr RCP stated his case and was questioned by Members. He did not wish to make a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** that to grant Mr RCP a combined Hackney Carriage/Private Hire Driver's Licence on the basis that he was a fit and proper person.

#### Decision and reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's 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.

In making a determination Members took account of the applicant's oral representations, his statement, reference and balanced these against the information contained in the certified and translated documents relating to his previous convictions obtained in his country of origin.

Members noted that Mr P had been convicted of 5 minor motoring offences in Romania within the last 3 years. As such the Council's Policy applies which says that Bath and North East Somerset Council will expect that an applicant will not have been convicted of three or more minor motoring offences during the previous three years. That said, Members took into account the nature of his minor motoring convictions and the mitigating circumstances that he faced in Romania and found they could depart from the policy on the facts of this case. Accordingly they find Mr P is a fit and proper person to hold a combined Hackney Carriage/Private Hire driver's licence but note that Mr P must be responsible for his own actions and that the road safety is of the utmost importance to the protection of the public. Members would take a dim view of any appearance before the LSC in the future should Mr P be convicted of motoring offences or any other offence.

**168 APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE: MR MM**

Mr MM confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer presented the report and distributed copies of a DBS certificate, a statement from the applicant and two references. The hearing was adjourned to give Members time to study these documents.

After the hearing had been reconvened the applicant stated his case and was questioned by Members. He made a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** to grant Mr MM a combined Hackney Carriage/Private Hire Driver's Licence on the basis that he is a fit and proper person

Decision and reasons

Members have had to determine an application for a combined Hackney Carriage/Private Hire Driver's 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.

In making a determination Members took account of the applicant's oral representations, his statement, references and balanced these against the information contained in the Disclosure and Barring Service report.

Members noted that Mr M had remained conviction free for the period anticipated in the Council's Policy however, as he has a conviction on his application, it is deemed contentious.

Members formed the view that the conviction arose out of a one-off incident that was out of character for Mr M and that he had learned his lesson. Members were satisfied that Mr M would be able to handle a confrontational situation as a taxi driver. Members find him to be a fit and proper person to hold a combined Hackney Carriage/Private Hire driver's licence.

## **169 CONSIDERATION OF CAUTION OBTAINED: MR MRC**

Mr MRC was accompanied by his partner. He confirmed that he understood the procedure to be followed for the hearing.

The Senior Public Protection Officer summarised the report and provided Members with copies of a DBS certificate and a statement from Mr MRC. The hearing was adjourned to allow Members time to study these documents.

After the hearing had been reconvened Mr MRC stated his case and was questioned by Members. He did not wish to make a closing statement.

Following a further adjournment the Sub-Committee **RESOLVED** to issue Mr MRC with a warning as they found that Mr MRC continued to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence.

### Decision and reasons

Members have had to determine what action to take against the holder of a combined Hackney Carriage / Private Hire Driver's Licence having received a formal police caution during the course of his 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 took account of the applicant's oral representations and his statement. Members balanced this against the formal police caution on his record.

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 noted that the licensee was first licensed in 1994 and that he had been a licensed driver without complaint until 2015.

Members had regard to the Council's Policy which states that Bath and North East Somerset Council will expect that a licensee will not have been cautioned by the police for an offence during the previous two years however, members noted that they can depart from the Policy where there are reasons for doing so.

Members formed the view that the police caution arose out of what seemed to be a genuine misunderstanding and Mr C did not try to minimise his mistakes which he admitted and acknowledged. Members noted that Mr C had acted as a licensed taxi driver from 1994 to 2015 without complaint. Accordingly Members find Mr C is a fit and proper person to continue to hold a combined Hackney Carriage/Private Hire driver's licence but issued a stern warning that he needs to be fully aware of, and understand his legal responsibilities and obligations as a licensed taxi driver.

## 170 LICENSING PROCEDURE

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

## 171 APPLICATION TO VARY THE PREMISES LICENCE FOR THE DARK HORSE, 7A KINGSMEAD SQUARE, BATH BA1 2AB

Applicant: That's What She Said Limited, represented by David Holley (Licensing Agent) and Louis Lewis Smith

Responsible Authority: Avon and Somerset Police, represented by Geoff Cannon (Police Licensing Officer)

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

The Senior Public Protection Officer summarised the report. She reported that the Police had made a representation relating to the licensing objective of the prevention of crime and disorder and had proposed additional conditions to further this objective.

Mr Holley stated the case for the applicant. He said the additional hours were being sought so that the premises could operate as a cocktail bar. He noted that the Police had not objected to the principle of the variation and said that the applicant had no objection to the conditions proposed by the Police. Mr Smith said that he had lived in Bath for twenty years and thought there were no premises offering what he wished to offer to customers. Free water would be available to customers at all times. He did not intend the premises to become a nightclub; he wanted to provide a calm and grown-up ambience in which business could be done over a relaxing drink. He was already doing the things required by the additional conditions proposed by the Police. They were the kind of things that suited the type of premises he wished the Dark Horse to be, and had no objection to their being made conditions.

The Senior Public Protection Officer drew attention to the new condition offered by the applicant that "all outside areas will be cleared of patrons by 23:00 each day" and pointed out that no outside areas were shown on the plan of the premises. Mr Smith confirmed that the premises had no outside areas and agreed that this proposed condition could be removed.

Mr Cannon presented the case for the Police. He said that Kingsmead Square is a particularly busy area of the city at night. It is situated on a route used by many late-night revellers. There is a takeaway nearby, which is likely to attract custom from patrons of the Dark Horse leaving the premises late at night. He believed that the application as originally submitted lacked clarity. He had had a serious conversation with Mr Smith, who had agreed to the conditions proposed by the Police. The lack of clarity in the application that he was concerned about included failure to specify the quality of the CCTV and the length of time that recordings would be retained. He would be concerned if food were not available when drink was being sold. Mr Smith had agreed that the original condition about the provision of hot food, which he had proposed to delete entirely, should be replaced with the condition proposed by the

Police requiring light menu-based meals being available. Since the premises would be operating as a cocktail bar, the Police had proposed that the Challenge 21 condition attached to the current licence should be replaced by a Challenge 25 condition. They had also proposed a condition requiring SIA-registered security staff to be on duty at the entrance to the premises on Thursdays, Fridays and Saturdays from 19:00 until closing. He said that the premises were well run and that the Police would have no further concerns about them at the present time if the conditions they had proposed were attached to the licence.

Members asked about the Challenge 25 condition. Was this intended to be a deterrent? Could the applicant refuse admittance to people under the age of 25? Mr Cannon said any one over the age of 18 would still be able to enter and drink at the premises, but the Challenge 25 condition would indicate that premises did not particularly wish to cater for those under 25.

There were no questions from the applicant.

The Senior Public Protection Officer pointed out that the specification of acceptable forms of identity in one of the proposed Police conditions was otiose, as there were legal requirements about acceptable forms of identity.

The parties were invited to sum up. Mr Cannon said that the Police believed better specified conditions were required for premises situated in the Cumulative Impact Area. Mr Holley said that the applicant would accept everything proposed by the Police.

Following an adjournment the Sub-Committee **RESOLVED** to grant the variation with modifications as detailed below.

#### Decision and reasons

Members have today determined an application to vary a premises licence at The Dark Horse, 7a Kingsmead Square, 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 the information put before them. In this case, however, Members noted the premises are situated in the Cumulative Impact Area. As the Council has a Cumulative Impact Policy in relation to the sale of alcohol for consumption on the premises, which applies to variation applications, a rebuttable presumption is raised that such applications should be refused unless the applicant demonstrates that the application promotes the licensing objectives and would be unlikely to add significantly to the cumulative impact being experienced.

Members were careful to take account of the relevant written and oral representations made and were careful to balance their competing interests. Members were however careful to disregard irrelevant matters.

## **Applicant**

The application was for a variation to the premises licence in respect of the sale of alcohol, provision of late night refreshment, to extend the opening hours and to remove a condition from the existing licence.

The applicant through his agent Mr Holley, noted that the police have not objected to the principle of the licensing application but there are certain things that the police would like to see to strengthen it. The applicant had no objection at all to the additional matters proposed by the police which simply anchor on to what already exists by way of condition.

Mr Smith as applicant said the purpose of the Dark Horse is to offer a very calm and grown up experience and that he welcomes all of the suggested conditions from the police which suit the kind of establishment that the Dark Horse is.

## **Responsible Authorities**

The Avon and Somerset Constabulary have objected to the variation application on the basis of the prevention of crime and disorder licensing objective however, they have said that they do not object to the variation sought per se, they simply take the view that more clear and detailed conditions are needed in order to promote the licensing objective.

Geoff Cannon Police Licensing Officer, informed the LSC that having entered into a dialogue with the Applicant, they had reached agreement on suitable licensing conditions which the Committee is asked to consider. Mr Cannon acknowledged the premises are well run and with these conditions in place the police would have no further concerns.

## **Members**

Members noted that there had been no representations from other parties.

Members found that the applicant had satisfied them that granting the variation would not contribute significantly to the cumulative impact already experienced.

Accordingly members resolved to grant the application subject to:

- i. conditions consistent with the operating schedule save for one deletion as set out below and agreed to by the applicant, and
- ii. the mandatory conditions; and
- iii. the conditions set out below agreed to by the Applicant in consultation with the police, subject to a small modification to remove duplication with a mandatory condition on the acceptable forms of ID, as members felt these conditions were appropriate and proportionate to deal with the objective of the prevention of crime and disorder:

### Deletion from M(d) of application

“All outside areas will be cleared of patrons by 2300 on each day”

### Conditions agreed to and approved by LSC

- A digital CCTV system will be fitted and maintained at the premises in consultation with the Police. The images will be of evidential quality, time and date marked and will be kept for a minimum of 31 days. Images from this system will be made available to the Police on request.
- Light menu-based meals will be made available at all times during the opening hours of the premises.
- A Challenge 25 proof of age scheme shall be adopted, implemented and advertised at the premises.
- There will be at least one SIA registered member of door staff on duty at the entrance to the premises on Thursday, Friday and Saturday nights from 19:00 until closing.

Authority was delegated to the Senior Public Protection Officer to issue the licence.

The meeting ended at 12.45 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**