

BATH AND NORTH EAST SOMERSET

LICENSING SUB-COMMITTEE

Thursday, 8th April, 2021

Present:- Councillors Manda Rigby (Chair), Steve Hedges and Sally Davis

Also in attendance: John Dowding (Lead Licensing Officer), Terrill Wolyn (Senior Licensing Officer), Shaine Lewis (Team Leader, Legal Services), Rebecca Jones (Principal Solicitor - Corporate and Community Law) and Annemarie Strong (Legal Advisor/Paralegal)

69 WELCOME & INTRODUCTIONS

The Chair welcomed those present to the meeting and introduced the other members of the Sub-Committee and the officers in attendance.

70 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

71 DECLARATIONS OF INTEREST

Councillor Sally Davis, Councillor Steve Hedges and the Chair, Councillor Manda Rigby all declared an other interest with regard to agenda item 7 as a member of the public, Tim Warren, who was speaking on behalf of a number of residents was a former Councillor of Bath and North East Somerset Council.

Councillor Steve Hedges declared an other interest with regard to agenda item 10 as he had previously had communication with the driver concerned on a planning matter within his ward.

72 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

73 MINUTES OF PREVIOUS MEETING - 21ST JANUARY 2021

The Sub-Committee approved the minutes of 21st January 2021 as a correct record.

74 LICENSING PROCEDURES

The Chair explained the procedure for the meeting to all parties who were present.

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

75 PREMISES LICENCE APPLICATION - CHEW VALLEY DISTILLERY, WELLINGTON GALLERY AND CORNER COTTAGE, TUNBRIDGE ROAD, CHEW MAGNA, BRISTOL. BS40 8SP.

The Senior Licensing Officer presented the report to the Sub-Committee. She explained that the application proposes the following licensable activity:

- The sale by retail of alcohol for consumption on and off the premises every day between 10.00 – 23.45.

The application proposes the following opening times:

- Every day 10.00 – 00.00

She informed the Sub-Committee that during the statutory period eight representations of objection were received that collectively expressed concerns that the applicant's proposals were likely to undermine all four of the licensing objectives.

She said that two representations in support of the application were received advising how the management of the premises, staff training and implemented policies would serve to promote the licensing objectives.

The applicant stated that no objections had been received from the responsible authorities and that no complaints had been directly received by them.

They said that the hours applied for would provide flexibility for the business to operate.

They explained that the proposed tasting events would be tailored to individual requests and would be for a set time and number of people.

The applicant said that any seating used in the outside area would be packed away in the evening and not available for general use.

Tim Warren asked if the outside area would be used for tasting events.

The applicant replied that it would not, it would be a waiting area or space for customers to have a drink outside.

Tim Warren addressed the Sub-Committee on behalf of a number of interested parties. He said that the outside area was in close proximity to a junction of two busy roads and that occupancy of this area could become a difficulty for driver visibility. He added that there were concerns that the area would be used for consumption after the purchase of off sales.

Councillor Karen Warrington addressed the Sub-Committee on behalf of Chew Magna Parish Council. She said that the amendments offered by the applicant were welcome, but that use of the outside area remained a cause for concern in respect of public safety and nuisance. She asked the applicant to consider addressing issues relating to parking and rubbish near the premises.

The applicant replied that it would advise customers to use the local public car park.

Decision and Reasons

Members have determined an application for a new Premises Licence at Tunbridge Road, Chew Magna. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy, Human Rights Act 1998 and case law.

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 on the information before them. Members reminded themselves that each application must be considered on its own merits.

The applicant stated this application is for a new premises licence adjoining their existing distillery. It was for the same hours as existing which is run without issue. The applicant stated it is a family run distillery hoping to expand on the back of their success and award winning gins. They would like to include "off-sales" to fulfil remote orders for delivery or collection and to run occasional tasting events and workshops. These would be limited to two events per week with a maximum of 28 attendees. It was further stated that the hours applied for are for flexibility, they are not a bargain booze operation and events would be pre-booked and they would not have a detrimental impact on the Licensing Objectives. In response to the Interested Parties, however, the applicant offered to cut back the closing time of the outside space.

An Interested Party in support stated the premises has not and will not have a detrimental impact on the Licensing Objectives and it is unlikely to attract loutish behaviour or those seeking a cheap drink.

Whilst generally welcoming the expansion of this local business the Interested Parties raised all 4 Licensing Objectives in objection. It was said that although the premises are set in a mixed business and residential area of Chew Magna if permitted as applied for they feared an increase from noise on and off the premises affecting local residents and children alike particularly from the outside area. They further stated that any increase in vehicular traffic would lead to an increase risk to the health and safety of those in the village, those using the outside area and cause associated difficulties with parking and accidents on the very busy and narrow village road. The Interested Parties also feared a late licence could attract people leaving one of more of the 3 public houses in the village and lead to further nuisance and antisocial behaviour.

Interested Parties agreed, however, that with adherence to suitable conditions and limiting the operational hours the business would doubtless grow and be an asset to the village.

In determining this application Members were careful to take account of the relevant written and oral representations both for and against the application and balanced their competing interests. Members were, however, careful to disregard matters governed by other statutory regimes, deregulated activities such as music and

matters not directly attributable to a licenced activity on the premises. For example, traffic risks, noise and parking, the protection of children from harm not on the premises, fire escape and capacity, business model and need, mental health, planning and the existence of any public rights of way.

Members also reminded themselves that this is not a Review of the existing Premises Licence, they must not speculate on future uses of the premises and they should disregard any previous related applications and deal with the application on its merits.

With regards to terminal hours and off-sales Members noted the Statutory Guidance and their Statement of Licensing Policy. For example, at 18.6 it is stated that shops, stores and supermarkets should generally be permitted to sell alcohol for consumption off the premises during normal hours they intend to open for shopping purposes. Further, and in terms of the operation of other outlets in the vicinity, the established principal is that terminal hours should be staggered although they may depart from this where it is appropriate to do so.

In terms of the potential for this premises to have a detrimental impact on the Licensing Objectives Members noted there had been no representations from Responsible Authorities. Further, and with regard to an evidential basis for the Interested Parties' fears, Members noted the applicant already operates a Premises Licence at the Wellington Gallery without issue and the only reference to noise and obstruction in the village was in the vicinity of the Lazy Lobster at South Parade. Whilst noting these premises are also owned and operated by the applicant there was no evidence presented to suggest that those incidences were directly attributable to the Lazy Lobster. Members had sympathy with the Interested Parties' legitimate concerns, however, there was no information linking incidents of nuisance or antisocial behaviour in the village to premises operated by the applicant and, moreover, nothing to suggest the application if granted would prove problematic.

Accordingly, as Members had not been presented with any evidence upon which to base a reasonable belief that these premises would have a detrimental impact on the licencing objectives, or given grounds to depart from Policy and or Guidance, the application was granted as applied for with the additional conditions offered by the applicant within the additional information.

Members did not, however, consider it appropriate or proportionate to impose conditions or cut back the use of the outside area.

Authority is delegated to the licensing officer to issue the licence with conditions consistent with the operating schedule and those offered by the applicant in the additional information.

76 APPLICATION - CONSIDERATION OF VEHICLE SUITABILITY TO BE LICENSED AS A PRIVATE HIRE VEHICLE – 21/00312/PHVL

The Lead Licensing Officer presented the report to the Sub-Committee. He explained that the report invited the Members to consider whether or not a vehicle that cannot comply with the standard private hire vehicle conditions is suitable to be licensed as a private hire vehicle.

He informed them that the application is for a convertible Mini Cooper which was first registered on the 1st March 2018 and at the time of application, the vehicle was 3 years old.

He said that the standard conditions attached to the grant of a Private Hire Vehicle licence state *“The vehicle must be fitted with a right-hand drive and shall have a minimum of four doors. At least three of these doors must be accessible for passengers to enter and exit the vehicle without the need to move, adjust, or climb over any seating”*.

He stated that the vehicle is fitted with 2 doors and whilst the vehicle is a convertible model, in the event of an accident when the roof is not retracted any passengers in the rear would not have an accessible egress from the vehicle. Therefore, the vehicle is non-compliant with this requirement stipulated by the standard conditions.

He explained that the standard conditions attached to the grant of a Private Hire Vehicle licence state *“A roof sign as prescribed by the Council shall be fitted to the vehicle at all time whilst hired or available for hire. The roof sign shall be fitted along the length of the vehicle’s roof, illumination of the roof sign is not permitted”*.

He said that the vehicle is a convertible model and cannot be fitted with a roof sign, therefore, the vehicle is non-complaint with this section of the standard conditions.

The Sub-Committee were shown a video to enable them to virtually inspect the vehicle.

The applicant addressed the Sub-Committee and said that in light of the Covid-19 pandemic they were seeking a new way to attract business alongside their longstanding small coach / mini-bus tours of Stonehenge.

They said that the vehicle would be used for sightseeing tours of the City and that customers would have to book and pay in advance for the tours.

They stated that when in use the vehicle would be travelling at a low speed for the majority of the time.

The applicant said that they were willing to seek other solutions regarding the need for signage on the vehicle.

Decision and Reasons

Members have had to determine an application for a Private Hire Vehicle Licence. In doing so they took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, the Council's Policy and the applicant's written and oral representations. Members also had the benefit of a 'virtual' inspection of the vehicle.

The applicant outlined the nature of its business and stated it has an operators' licence to run larger buses and mini-bus tours and have done so without incident or accident. They now wish to run smaller bespoke tours and use the iconic Mini to do so as others throughout the UK already do. It was accepted, however, that the vehicle does not meet the requirements of the Council's Standard Conditions. In terms of safety it was stated that whilst the vehicle is two door the vehicle would not be used for multiple pick up and drop off but rather as a convertible, low speed tour option. Accordingly, the applicant believed that emergency exit would not be an issue.

In determining the matter Members reminded themselves that they must be satisfied that the vehicle is suitable in type, size and design for use as a private hire vehicle and, furthermore, safe and comfortable.

Members approached this application on its merits and noted in terms of their Policy covering colour, luggage, plates, roof signs and for vehicles to have 4 doors that they may depart from Policy with good reason. Nevertheless, Members were clear in that their primary duty is the protection of the public and that the Policy is in place to serve that very purpose.

Having had the benefit of a 'virtual' inspection Members were disappointed to note there was no demonstration of how rear seated passengers would get in and out of the vehicle. They noted, however, that the intended exit route for rear seated passengers in an emergency must be over collapsed front seats through the front doors or, in extreme circumstances, through the rear roof space over the side or rear of the vehicle.

Accordingly, Members found that without rear doors there is a risk that the rear seated passenger exit routes could be blocked in the event of a loss of control and or collision with other vehicles, structures or road furniture whatever the speed on impact.

Moreover, Members found there was a risk to the safety of rear seated passengers as they may not be able to exit through the side or rear roof for any number of personal or incident related reasons. In all the circumstances, therefore, and noting the vehicle will not be used as a 'jobbing' Private Hire Vehicle, Members were not against the convertible aspect of the application but rather found no good reason to depart from the Policy requirement for a licenced vehicle to have 4 doors.

Therefore, Members do not find the vehicle suitable in type, size and design to be licensed as a Private Hire Vehicle. The application is therefore refused.

77 EXCLUSION OF THE PUBLIC

The members of the Sub-Committee agreed that they were 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. They **RESOLVED** that the public should be excluded from the meeting for the following item(s) 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.

78 CONSIDERATION OF FIT AND PROPER - 19/02288/TAXI

The Lead Licensing Officer presented the report to the Sub-Committee. He explained that the report invited the Members to consider whether the driver concerned remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence having obtained a recent conviction.

He informed the Sub-Committee that the driver has held a combined Hackney Carriage/Private Hire drivers' licence with this Authority since 1st July 2016.

He said that on the 16th October 2020 the driver informed licencing of a summons to appear before Bath Magistrates Court and that on the 26th October 2020 the driver informed licencing that he had subsequently attended Bath Magistrates Court and been convicted of an offence.

He explained that the Policy adopted by Bath & North East Somerset Council in relation to previous convictions, cautions and fixed penalty notices states *"applications from applicants disclosing a history of offending showing convictions and or formal police cautions falling within or outside of this policy will be referred to the relevant Licensing Sub-Committee for determination"*.

He stated that there have been no complaints regarding driver's behaviour since the grant of his licence in 2016.

The driver addressed the Sub-Committee and explained that he had taken his children out of school for a holiday. He stated that the conviction received related to non-payment of a fine for this action. He said that he never received notification of the fine and that had he done so he would have paid it.

He added that he also holds an Operators Licence and provides Home to School transport across the Council. He said that they have often been praised for their safety by users of this service.

Decision and Reasons

Members have had to consider whether the Licensee remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence having informed the Licensing Authority of a conviction received on 26.10.2020. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law, Council Policy and the Licensee's oral representations.

The Licensee said he had taken his children out of school for a holiday and was at first unaware that he had been fined. He said he also holds an operator licence and does not believe the conviction will impact on his fitness.

Members noted that the Licensee had made the authority aware of a summons and conviction for an offence of failing to secure regular school attendance.

Members gave the licensee credit for acting in accordance with their Policy and noted the Licensee had been licensed since 2016 without complaint or incident. In all the circumstances Members did not consider the offence impacted on the licensee's fitness to hold a licence and take no further action.

The meeting ended at 12.55 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services