

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING SUB-COMMITTEE**

Thursday, 30th June, 2022

**Present:-** Councillors Rob Appleyard (Chair), Steve Hedges and Karen Warrington

**Also in attendance:** Carrie-Ann Evans (Team Leader, Legal Services), John Dowding (Lead Officer - Licensing) and Geoff Cannon (Public Protection Officer (Licensing))

#### **23 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer advised the meeting of the procedure.

#### **24 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were none.

#### **25 DECLARATIONS OF INTEREST**

There were none.

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

There was none.

#### **27 MINUTES OF PREVIOUS MEETING: 31ST MAY 2022 AND 8TH JUNE 2022**

The Sub-Committee **RESOLVED** that the minutes of the previous meetings be agreed as a correct record and signed by the Chair.

#### **28 LICENSING PROCEDURE**

The Chair explained the procedure for the meeting and all parties confirmed that they had received and understood it.

#### **29 APPLICATION FOR VARIATION OF A STREET TRADING CONSENT: PITCH 24, JIMMY'S KEBAB, TERRACE WALK, BATH.**

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He explained that an application had been received to vary the Street Trading Consent times for Jimmy's Kebab, Pitch 24, Terrace Walk, Bath, from finishing at 03:00hrs to finishing at 04:00hrs every day (to trade an hour later).

He informed the Sub-Committee that a number of objections were received on the grounds of potential increase in Anti-Social behaviour, noise and litter which affects nearby residential and commercial premises.

## Decision and Reasons

Members have had to determine an application to vary a Street Trading consent at Pitch 24, Terrace Walk, Bath, to increase the hours of operation by one hour at the end of each day. In determining the application, Members had regard to the Local Government (Miscellaneous Provisions) Act 1982, Council Policy and Human Rights Act 1998.

Mr Navarette addressed the committee on behalf of the applicant. He explained to members that the applicant is passionate about providing good food, he has been on site for 3, nearly 4 years and never had to call the police. He does not play music nor have flashing lights and always cleans up the area after they finish their work. He always pays his fees on time and ensures his paperwork is up to date. He tries to maintain a low level of noise. Mr Navarette explained that his client had recently installed CCTV to help reduce crime and anti-social behaviour, was passionate about providing a service in a good and safe manner and does not serve alcohol. On questioning regarding the CCTV, Mr Navarette explained that his clients feel CCTV is a good deterrent and the police had welcomed it, as it can help with other enquiries. He accepted that they see the need for it and recognise anti-social behaviour in and around the area.

Mr Navarette noted that there are two pitches very close to Mr Yilmaz's which have recently been granted extensions of time until 4am. He asked Members to consider allowing a trial period consent for the additional hour if needs be.

Mr Navarette alluded to a petition that his client had in support of the application.

As this was late additional information and such information would only be admitted in exceptional circumstances, the Chair invited representations from the parties in relation to its late admission. Mr Cochrane, solicitor for The Abbey Hotel who had made an objection, objected to the late admission of this material on the basis that it would have to be examined carefully to identify who had signed it where they had come from. Councillor Craig echoed these observations, unless it could be established that the people who had signed the petition live or work in close proximity to the pitch, it would be of limited reliability. In the circumstances members decided not to allow the petition to be admitted into evidence but acknowledged its existence. Mr Navarette thanked members for considering the issue.

There was a written representation from Mr Josh Watts on behalf of 1-5 North Parade inclusive being The Abbey Hotel. The objection related to anti-social behaviour which Mr Watts said was disturbing their guests on a daily basis resulting in refunds and ruining their business reputation.

Mr Cochrane, solicitor for Abbey Hotel, addressed members with oral representations and indicated that his submissions were based upon the evidence of Mr Kiengsri, Night Manager of the Hotel for 8 ½ years. Mr Cochrane indicated that during the period of 3-4 years that Jimmy's had been there, substantial periods of which was in lockdown, they had noticed an increase in anti-social behaviour which had resulted from the presence of Jimmy's Kebabs.

The hotel has about 25 rooms that face out onto the pitch and they were receiving complaints from people being disturbed in the night as a result of people attracted to

pitch, largely from Labyrinth nightclub, also there was a tendency for people to come from Second Bridge nightclub causing disturbance with shouting, swearing and general chatter. The difference in the position now and before Jimmy's was there, is that the Labyrinth is pretty good at transiting people off, but it is not their responsibility to deal with people going to Jimmy's which acts as a magnet for people who cause disturbance. In 3 months or so, The Abbey Hotel had paid out approximately £2,000 in compensation, due to the disturbance they have been caused. The problem with noise and disturbance escalates from about 2:15am as people start to leave local nightclubs and gravitate towards the pitch and it is curtailed at 3:15am. By extension, if the additional hour is granted, this is likely to become exacerbated. Mr Cochrane submitted that evidentially, they can establish that there is a problem at the minute and logically this is likely to continue.

Mr Philip Pearce, owner of the Green Rocket Café, wrote to object against the application on the grounds of anti-social behaviour, noise, litter and vomiting. There was a written objection from Councillor Sue Craig who indicated that there had been noise and anti-social behaviour reports associated with this pitch which is directly opposite The Abbey hotel and causes disruption to guests in the early hours of the morning. In oral representations, Councillor Craig reiterated her written representations and explained that the pitch is near residential properties and a lot of buildings are listed, so cannot have double or triple glazing. Noise from the pitch is very disruptive, despite any efforts by pitch holder, and there are reports of littering and anti-social behaviour. Councillor Craig submitted that to increase the consent from 3am to 4am would be unacceptable in a place with residents.

Members noted that there were no representations from consultees such as the Police, Environmental Protection or Highways Department.

In reaching a decision Members took account of the relevant representations and balanced the competing interests of the applicant and the objectors. Members noted that the principle of the pitch has already been established and this application concerns an increase in hours of operation from 0300 to 0400 daily.

Members are mindful that their Policy anticipates a street trading environment that is sensitive to the needs of residents alongside providing diversity and consumer choice, amongst other things.

Members noted that Mr Yilmaz is a conscientious pitch holder who takes his business responsibilities and obligations under his existing consent seriously, but on balance, Members found on the evidence that they had heard and read as indicated above, that there was likely to be an increase in nuisance and annoyance to people using the street and otherwise, that could not be mitigated by the standard or additional conditions. For that reason, they did not think that a shorter period of consent as a trial was appropriate either. Accordingly, they refused the application.

## 30 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.

## 31 CONSIDERATION OF FIT AND PROPER - 22/00594/TAXI

The Lead Officer - Licensing presented the report to the Sub-Committee. He explained that the Sub-Committee are asked to consider the matter, determine the issue and take any action it may consider suitable after hearing any representation from the licensee or any representative acting on their behalf.

The members of the Sub-Committee and Team Leader, Legal Services asked questions of the licensee regarding each of the complaints against him and he responded accordingly.

### Decision and Reasons

Members have had to consider whether or not the applicant is fit and proper to continue to hold his combined Hackney Carriage/Private Hire Driver's licence in the light of a complaint regarding a number of incidents, received against him. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law, Council Policy, the written account of the complaint, the applicant's oral representations and the Local Authority Designated Officer's written representations.

Members heard from the licensee in oral representations who explained that he was no longer doing the Home to School runs and had no desire to go back to doing them. The licensee accepted that he had completed the safeguarding course in January this year and that covered how and who to report any safeguarding concerns to. He explained that he did not report anything because he thought it would have "fallen on deaf ears" and explained that the particular run needs an escort, something which he also admitted he had not reported. The licensee indicated in oral representations that things had been taken out of context but in hindsight he wishes he had not made the comment regarding the weed.

On questioning, the licensee was asked why he thought the girl had made an unprompted complaint and his explanation for this was that she had a reputation for telling tales and she had overreacted. On questioning, he accepted he was not there and could not comment on her reaction.

The licensee was taken through each of the allegations made against him and his oral representations were in accordance with his account in interview under caution at Annex C of the report. In essence, whilst he accepted some of the allegations, he

said they were taken out of context and with the benefit of hindsight he should have done some things differently. He accepted that he that should not have said the comment he did in relation to cannabis. He apologised to members if he had caused concern and could not understand why the allegations were made.

Members read a statement from BANES' Local Authority Designated Officer at Annex D of the report, which set out her concerns that the licensee had, broadly:

- Engaged in a conversation that was not appropriate
- Failed to report to the transport team or school, significant incidents during the journey which related to the children's behaviour being difficult to manage
- Been given information that suggests a child has suffered harm or is at risk of suffering harm and failed to report that, which should have been done immediately to school or the transport team
- Made no record of what the child said, which means the relevant agencies have no clarity as to what was said and when the incident may have taken place
- Despite recent safeguarding training he has failed to act upon safeguarding concerns
- Apparently not taken any responsibility for his lack of action or communication.

Members noted that:

- the licensee has continually held a combined Hackney Carriage/Private Hire Driver's Licence with BANES since 2008 but worked within the taxi trade on and off for 31 years.
- the licensee's conduct was such that a female child had broken down at school and talked about how she hates and dreads her taxi journeys to school each day and provided a report to a member of school staff as per Annex B of the report.
- the licensee admitted that a child had disclosed his mother's cannabis use to him and he had failed to report this as a safeguarding concern.
- the licensee admitted that one of the children disclosed watching porn hub (which was additional information that came to light during the hearing) and that his brother "tried to force his head on him" but had failed to report this safeguarding concern.
- The licensee said that in all the times he had been taxi-ing there had never been another complaint about him, but he then went on to say "*In all this time I can count all the incidents on one hand but never had any complaints*"

Members note that they can have regard to hearsay evidence. Weighing in the balance the complainants' evidence, the fact that another mother had reported similar concerns to the school and the number of admissions made by the licensee - albeit his claim was they were taken out of context - they prefer the complainants' evidence. They found that the licensee minimised the allegations and did not appreciate their seriousness.

The licensee had completed a compulsory approved Safeguarding Course approximately 2 months before the complaint but had failed to report numerous

matters, which in the view of the LADO were a safeguarding concern, one of which a child was alleged to have suffered harm or be at risk of suffering harm. Members noted that the licensee's operator had immediately taken him off Home to School contracts upon receipt of the complaint.

On balance, for the reasons noted above, the LADO's written observations, admissions recorded herein and in the interview under caution, Members find that the applicant is no longer fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence and revoke his licence on notice pursuant to section 61(2A) of Local Government (Miscellaneous Provisions) Act 1976.

Authority is delegated to the Licencing Officer to revoke the licence pursuant to section 61(2A).

The meeting ended at 1.21 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**