

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Thursday, 16th November, 2023, 10.00 am

Councillors: Steve Hedges (Chair), Toby Simon and Ann Morgan

Officers in attendance: Carrie-Ann Evans (Team Leader) (Barrister), Legal Services), Wayne Campbell (Public Protection Officer (Licensing)), Holly Woodrow (Public Protection Officer (Licensing)), Geoff Cannon (Public Protection Officer) (Licensing)) and Marie Todd (Senior Democratic Services Officer)

48 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the Emergency Evacuation Procedure.

49 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

50 DECLARATIONS OF INTEREST

There were none.

51 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was no urgent business.

52 MINUTES OF PREVIOUS MEETING: 19TH OCTOBER 2023

The Sub-Committee **RESOLVED** to approve the minutes of the meeting held on 19th October 2023.

53 LICENSING PROCEDURE

The Chair made reference to the procedure and stated that all parties would be given a fair amount of time to make their statements and give their evidence to the Sub-Committee,

The licensees, applicants and other parties that were present confirmed that they had received and understood the licensing procedure.

54 EXCLUSION OF THE PUBLIC

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.

It was **RESOLVED** that the public be excluded from the meeting for the following 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.

55 CONSIDERATION OF FIT AND PROPER STATUS - 22/00070/TAXI

The driver confirmed that he had read the papers for the meeting which had been sent to him. A printed copy of the agenda papers was provided for the driver, and he was then given time to read through these with the aid of an interpreter. He then confirmed that he understood the licensing procedure and was happy to go ahead with the hearing.

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He explained that they were being asked to determine the driver's fitness to continue to hold a combined hackney carriage/private hire driver's licence.

The driver addressed the Sub-Committee and referred to the littering offence that he had been accused of. He stated that the time of the CCTV of the incident was not consistent with the time stated on the letter sent to him by the Council. The Licensing Officer confirmed that the fine for the littering offence had been paid in full.

The driver stated that he is a good taxi driver and has received no complaints in relation to his work. He stated that he had previously worked for a school in Italy. He explained that he had been concerned by the behaviour of the child he was transporting as she had pulled the escort's hair and kicked her, she had also kicked the chair and punched the windows. He felt that it would be unsafe to drive while this behaviour continued which is why he made the comments to the child as set out in the report. No concern was expressed by the escort or the parent at the time.

He then spoke about the incident where he had been issued penalty points for waiting at a taxi rank and stated that this had been a mistake and had been unintentional.

When stopped by the Civil Enforcement Officer regarding a littering offence the driver stated that he had been angry at the time and had apologised for his behaviour. This had been a mistake and he did not feel that it was a serious criminal offence.

Cllr Steve Hedges asked whether the driver felt it was acceptable to raise his voice to a child and to say what he had said. The driver stated that he had been trying to calm the child down and to assist her escort. He noted that there was also a language barrier which could have added to the confusion. He had concerns about being able to drive safely due to the behaviour of the child.

The Public Protection Officer (Licensing) noted that the driver's behaviour had caused the escort to make a complaint and report him. He also referred to the safeguarding course which the driver had subsequently attended.

The driver stated that he had not understood everything on the safeguarding course due the language barriers. He did not remember much about the course.

Cllr Toby Simon asked the driver what type of work he was doing now. The driver explained that he is working as a private hire and hackney carriage taxi driver but is not carrying out school runs.

The Chair stated that in his role the driver is employed to take people from A to B and that it is not his role to discipline passengers. He asked whether it would have been better to have pulled over and waited for the child to calm down. The driver stated that, on reflection, it would have been better to do this. However, he had acted as he believed was right at the time and stated that his intentions had been good.

The driver summed up by stating that he is a very good taxi driver but sometimes makes mistakes. He is generally patient with people, loves his job, enjoys helping people and wants to continue as a taxi driver.

Decisions and Reasons

Members have had to consider whether or not the licensee is fit and proper to continue to hold a combined Hackney Carriage/Private Hire Driver's Licence following a complaint regarding his conduct on a home to school journey. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and Council's Policy.

Members reminded themselves that each case is considered on its own merits.

The licensee was assisted at Committee by an interpreter.

Members had read the written accounts and representations made by the licensee contained in the agenda reports pack and they heard from him and his interpreter in oral representations. They had also had regard to the totality of the reports pack.

The licensee informed Members that he had been doing school runs for 5 years. In relation to the incident concerning the child on 05.07.23 the licensee said that a teacher had been chasing the child around the school yard for 10 to 15 minutes as the child did not want to go home. He accepted opening his car window at this point and saying to the child "*...if you don't get into the car now, I am going*". He accepted raising his voice because the child was far away but said he did not yell. The licensee said the child ignored him and carried on doing what she was doing. The licensee accepted that he stopped the car on the way home, because the child was agitated and started to kick the doors and windows, which was too stressful for him to drive, and he was concerned for the safety of his passengers. Once he stopped the car, he went to the passenger door next to the child, opened it and said to her "*Please stop, if you don't stop you stay here in the middle of the forest with the wolves.*" After which the child had cried then for 10 or 20 seconds.

The Licensee accepted that about 4 or 5 months before that, the child had been even more agitated in his vehicle, he had stopped his vehicle and opened the passenger door where the same child was seated and said: "*if you don't stop you stay here, and I don't take you home.*" He could not recall if he mentioned wolves on that occasion. The licensee's account in writing was that the school escort had commended him on his actions on that occasion and said that the child's mother had endorsed his action as well. The licensee acknowledged that the child and School Escort were upset by the July incident. The licensee's explanation for his conduct was to try and calm an unsafe situation in his car that was putting other passengers

at risk. The licensee said he understands that it is not normal to raise his voice to a child, but the child had repeatedly been asked to stop and did not.

The licensee indicated to Members that he has a diploma for dealing with vulnerable people and handed up a copy of his Operatore Socio Sanitario which seems to be equivalent to a Health and Social Care Assistant qualification.

The licensee acknowledged that he had attended the Safeguarding Training but did not recall much about the course.

In relation to the littering incident on 28.02.23 the licensee accepted that it was him in the CCTV footage at the layby where the offence took place but said that there was a discrepancy between the time on the footage and the time on the fixed penalty notice. Licensing had identified that the fixed penalty notice had been paid.

In relation to the incident in 17.07.23 where the licensee was observed at the Orange Grove taxi rank not wearing his BANES licensing ID badge, the licensee indicated that part of the lanyard was broken which is why he was not wearing it.

Members noted from Annex E of the report that there was an account from Special Educational Needs Co-ordinator (SENCO) who was present with the School Escort and child at school on 05.07.23. She reported to Passenger Transport for BANES that the child was visibly scared to get into the taxi as the Licensee was shouting out of his car window at her which had caused the child to run uncontrollably across the school site. The SENCO also recorded that the child had commented several times at home and school that she feels the taxi driver is not kind to her. The SENCO went on to express the view that that afternoon the licensee had talked to the child in a very aggressive tone which was extremely unhelpful in encouraging the child into the taxi given her significant attachment and trauma difficulties.

The Co-Head of the school indicated in correspondence at Annex E of the report pack that the child has special education needs and an Education Health and Care Plan. She has complex emotional needs that lead to frequent, unpredictable and persistent challenging behaviours, often impulsive in nature and with no apparent triggers. She is unable to identify her emotions or regulate herself.

Members had regard to the fact that the licensee has had no complaints from members of the public in the seven years that he has been licensed. The licensee described his conduct as a mistake but said he is a good taxi driver.

Members bear in mind the fact that the licensee appeared before Committee on 10.03.22 when his licence was suspended for 3 months due to:

- 5 speeding convictions since the issue of the applicant's first licence in 2016;
- failure to follow the requirements of the licence to report motoring convictions despite the previous warning, and
- the misinformation supplied by the licensee to a Civil Enforcement Officer.
- The licensee was also warned by committee on that occasion that any further breach of licence conditions could have a different outcome.

Having regard to the licensee's previous appearance before the Committee and resulting suspension as well as:

- (1) His behaviour during the incident on 05.07.23 which demonstrates he does not have the appropriate judgement of how to deal with children he is responsible for transporting,
- (2) the littering incident on 28.02.23
- (3) the incident on 15.07.23 where he failed to display his ID badge, and
- (4) The fact that he does not appear to have the insight into what conduct is required of him as a BANES licensed driver

Members are no longer satisfied that he is fit and proper to hold a combined hackney carriage/private hire driver's licence and consequently his licence is revoked.

56 CONSIDERATION OF FIT AND PROPER STATUS - 21/02421/TAXI

The Public Protection Officer (Licensing) introduced the report to the Sub-Committee. He explained that they were being asked to determine the driver's fitness to be able to continue to hold a combined Hackney Carriage/Private Hire driver's licence.

The driver addressed the Sub-Committee and confirmed that he had provided the blood test and medical information which they requested at the last meeting. He confirmed that he hardly drinks any alcohol at the present time.

Decision and Reasons

Members have had to consider whether or not the licensee is fit and proper to continue to hold a combined Hackney Carriage/Private Hire Driver's Licence in light of a Conditional Caution from the police obtained during the currency of his licence. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and Council's Policy.

The Licensee appeared before the Licensing Sub Committee on 07.09.23 when there was a decision to defer the hearing to a later date. This was so that the licensee could liaise with his GP to provide a view in relation to whether or not the licensee continues to meet the Group 2 DVLA driving standards, and this could include the licensee obtaining a Carbohydrate Deficient Transferrin (CDT) test.

Members reminded themselves that each case is to be considered on its own merits.

Members heard from the licensee who indicated that he had done what Members had asked of him since the last hearing.

Members had regard to the fact that the licensee has had no complaints from members of the public in the eight years that he had been licensed, they also noted that he complied with the conditions of his licence in that he reported his arrest the day after the incident. Conversely, they noted that he received a caution from licensing in March 2019 for driving a Private Hire vehicle whilst not holding a valid Hackney Carriage/Private Hire Driver's licence. Members noted however that the licensee was on his way to the licensing office to renew his licence when he committed the offence.

Members note that the Policy provides any new applicant is expected to have been caution free during the previous two years and that a serious view will be taken of any convictions occurring whilst the person holds a current licence. For the purposes of the Policy 'conviction' is taken to include a caution. Members can depart from the

Policy where there are cogent reasons for doing so. In relation to the caution administered by Licensing in 2019, whilst he had committed an offence this was done out of ignorance, and that offending behaviour alone does not call into question his fit and proper status. In relation to the incident on 11.01.23, they find that to be an out of character isolated incident. Having considered the results of the CDT DVLA approved blood test, Members note that his current levels as of 20.09.23 show that they fall within the category of those who consume little or no alcohol. In respect of his D4 Medical Examination Report they note that no history of drug or alcohol misuse or dependence is noted. There is a history of liver disease, but it is not linked in the report to current alcohol misuse. In the light of this evidence, Members were satisfied on the balance of probabilities that the Licensee is fit and proper to continue to hold his Combined Hackney Carriage/Private Hire Driver's licence. They do however issue a warning as to his future conduct in view of the police Conditional Caution.

57 RETURN TO OPEN SESSION

At this point the Sub-Committee returned to open session.

58 APPLICATION FOR A VARIATION OF A PREMISES LICENCE FOR: RAINCHECK, 7 EDGAR BUILDINGS, BATH, BA1 2EE

The Sub-Committee confirmed that they had received copies of the additional information circulated by the Licensing Consultant. They were also provided with paper copies of the documents at the meeting.

The Public Protection Officer (Licensing) presented the report to the Sub-Committee. He stated that they were being asked to determine an application for a variation of a Premises Licence for Raincheck, 7 Edgar Buildings, Bath, BA1 2EE. He confirmed that no comments had been received from the responsible authorities. Two relevant representations had been received, one from a local resident and one from the Chair of the Circus Area Residents' Association. He also explained that the premises is located within the B&NES Cumulative Impact Policy which is relevant to the application.

Cllr Toby Simon asked whether any complaints had been received regarding this premises. The Public Protection Officer confirmed that no complaints had been received in the last two years.

Terrill Wolyn, Licensing Consultant, presented the case for the applicant and explained that Raincheck is a high-end premises with professional people as its clientele. She pointed out that there have been no concerns or complaints received since the licence was granted.

She explained that the issues raised by the objectors were not relevant to the licensing objectives. She stated that there is no evidence that groups of revellers in the proximity had left a licensed premises.

She stated that there is no evidence that Raincheck creates a serious disturbance. There is also no evidence to suggest that family life for residents would be detrimentally affected as the clientele and circumstances would be the same on Monday to Wednesday as on Thursday to Saturday. No issues have been raised

regarding the clientele with regard to noise, public nuisance or crime and disorder. This is a testament to the way that the premises is managed. The current conditions under which the premises operate are appropriate.

Ms Wolyn also explained that the general principles of the Licensing Act must apply and that a variation must be granted if there are no relevant objections.

In response to a question from Cllr Toby Simons it was confirmed that Raincheck is a cocktail bar and not a food establishment. The applicant also explained that on weekdays they operate a table service for around 30 to 50 people with no large groups. It was also noted that there are generally no hen or stag parties mid-week and that these groups would have to pre-book and door staff would then be provided.

Cllr Steve Hedges asked whether there was music at the premises. The applicant stated that there is relaxed music which is not too loud and that there is no dance floor. Notices are provided asking people to respect neighbours. Ms Wolyn explained that there is a wind down period to ensure that people do not all leave the premises at the same time.

Ms Wolyn summed up by stating that this is a stylish and well-run establishment which is part of Bath's vibrant and diverse night-time economy.

Decision and Reasons

Members have determined an application for a variation to the Premises Licence at Raincheck, 7 Edgar Buildings, Bath, BA1 2EE. 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.

Members noted that the premises falls within the Cumulative Impact Assessment Area which means that the Cumulative Impact Policy is engaged. In those circumstances there is a rebuttable presumption that applications for variations relating to "on trade" (sale of alcohol for consumption on the premises) situated within the Area will be refused if relevant representations are received unless the applicant can demonstrate that the operation of the premises will not add to the cumulative impact already being experienced.

Members had regard to 2 lots of additional information provided on behalf of the applicant and circulated to the objectors in advance of the hearing, comprising: section 5A Licensing Act 2003, a summary of the Thwaites case, an extract from the BANES website with links to the BANES Statement of Licensing Policy and Appendices, excerpts from the Banes Licensing policy and Statutory Guidance and e-mail confirmation from BANES' Licensing department that there is no record of any complaints against the premises for the two years prior to the current application.

Terrill Wolyn, agent for the applicant addressed members and talked them through what was applied for in terms of regulated activities. To amplify, she explained that the premises is a stylish, welcoming, well-run establishment which has already been operating during the late-night hours requested during the latter part of the week. Ms Wolyn noted that there were no representations from the police or Environmental Protection or any of the other responsible authorities in relation to public nuisance or crime and disorder, and they are the experts in this area. Ms Wolyn also indicated that there were no complaints to licensing in relation to the premises since it opened in 2021. Ms Wolyn made the observation that within the objections there is no evidence provided which links to the premises. In submissions Ms Wolyn addressed members on the cumulative impact policy.

Members had regard to the written objections from Mr Baldwin, Chair of the Circus Area Residents Association and Mr Merriweather who is a resident. Those objectors expressed concerns that the proposed variation would undermine the licensing objectives of prevention of crime and disorder and prevention of public nuisance. They were concerned about the impact of another late-night venue in this area which they felt was already saturated with late night premises. They were also concerned about noise and disruption and the stress and potential mental health impact on families living in the area.

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 disregarded irrelevant issues including the necessity, or not, of the proposal.

Members noted that there had been no representations from Responsible Authorities.

Members were satisfied on the evidence they had heard and read that the application would not add to the cumulative impact already being experienced. Authority is therefore delegated to the licensing officer to issue the licence as applied for.

The meeting ended at 2.35 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services