

## **BATH AND NORTH EAST SOMERSET**

### **LICENSING (TAXIS, STREET TRADING AND MISCELLANEOUS) SUB-COMMITTEE**

**Tuesday, 7th May, 2013**

**Present:-** Councillors Sarah Bevan (Chair), Gabriel Batt and Chris Watt

**Also in attendance:** Alan Bartlett (Principal Licensing Officer), John Dowding (Senior Licensing Officer), Enfys Hughes and Shaine Lewis (Principal Solicitor)

#### **72 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer drew attention to the emergency evacuation procedure as set out on the agenda.

#### **73 APOLOGIES FOR ABSENCE**

Councillor Bryan Chalker sent his apologies, Councillor Chris Watt was his substitute.

#### **74 DECLARATIONS OF INTEREST**

There were none.

#### **75 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR(PERSON)**

There was none.

#### **76 MINUTES - 9TH APRIL 2013**

**RESOLVED** that the minutes of the meeting held on Tuesday 9th April 2013 be confirmed as a correct record and signed by the Chair(person).

#### **77 LICENSING PROCEDURE - APPLICATIONS FOR LICENCES, PERMITS AND CONSENTS**

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

#### **78 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT PORTER PUBLIC HOUSE, 2 MILES'S BUILDINGS, BATH, BA1 2QS**

The Sub-Committee considered the report which sought permission to provide facilities on the highway for recreation/refreshment at the Porter Public House, 2 Miles's Buildings.

The applicant was present. He confirmed he had read and understood the procedure for the meeting. There were several objectors present.

The Licensing Officer presented the report and confirmed the application was for 21 tables and a number of chairs, every day from 10am – 11pm and the usual consultation had taken place. Several objections had been received to the application. He also informed Members that one objector Gillian Ryan, had requested that a witness speak in support. Following discussion Members agreed to allow the witness, Ian Perkins.

The applicant put his case, he highlighted that the Porter would soon be closing for refurbishment and there would be a significant change in the operation and he was aiming for a different clientele. He had met with local residents to see if there could be some agreement on his plans. He added that thought there was an increase in the numbers of tables and chairs there was no increase to the area. Following questions the applicant stated that he was willing to remove the tables and chairs at the front of the building and one at the far end in Miles's Buildings and reduce the number of tables to 16. He showed Members, Officers and Objectors on the plan.

The Licensing Officer confirmed that the current permission had expired on 31<sup>st</sup> March 2013 but the area applied for was the same with an increase in tables and chairs.

The objectors put their case as follows:-

Robin Davies: highlighted that Miles's buildings was a beautiful part of the city and the tables and chairs blocked the view. He stated that in 2009 planning permission had been refused so there had been a contravention in planning terms. With an increase in the number of tables the smokers could be pushed further up into Miles's Buildings. There did not seem to be enough room for tables at the front of the building. Where would the tables and chairs be stored? The applicant had engaged with the residents but if he reduced the hours they would believe him to be more genuine.

Henry Brown: his concern was the encroachment on the highway as the area applied for was over half of the width of Miles's Buildings and he suggested the stone channel in the middle of the highway was a more suitable boundary. He believed that to have tables and chairs at the front of the building would restrict the area for pedestrians. In respect of the increase in numbers of tables and chairs, he commented that if the second rank of tables on Miles's Buildings was taken out of the application there would still be twice as many tables and chairs as previously permitted.

Gillian Ryan (spoke for the Dougalls in their absence): her objection was the encroachment which seemed to be increasing into Miles's Buildings leaving less space for smokers and drinkers who did not stay within the boundary. In the past she stated that it was very hard for her to pass with a wheelchair. She commented on the management of the area and stated that it got harder to control as the night wore on. In conclusion she stated there were issues of noise and music.

Kim de Morgan: she stated that she was regularly disturbed by noise and music from the Porter which reverberated from Miles's Buildings up to the Circus. She had spoken to the applicant about acoustic curtains to stop the noise from people outside the

Porter. In conclusion she supported that change of operation to a restaurant and away from a pub that attracted young adults.

Ian Perkins (witness for Gillian Ryan): he stated that local residents were disappointed as they had anticipated changes since the new manager had taken over but there had had been none and the outside area continued to be badly managed and left unsupervised with little or no intervention from staff.

The applicant went on to make a closing statement and stated that he had inherited the staff and the operation and management would change following the refurbishment. He concluded by stating he was not increasing the area, had offered to reduce the number of tables and chairs, there was no highway objection, tables and chairs would be stored in the vaults, he would not be selling cigarettes and the outside area would be better managed and supervised.

Following an adjournment it was

**RESOLVED** that a permit be granted for 4 tables on George Street, as applied for, and 12 tables along the length of Miles's Buildings as indicated on the application but not to extend beyond 2.3 metres towards the centre of the highway, for recreation/refreshment at the Porter Public House, 2 Miles's Buildings, Bath, subject to the standard terms and conditions.

#### Reasons for decision

Members took account of the Highways Act, the Council's Policy, the applicant's representations and those made by the objectors.

Members granted a permit for 4 tables on George Street as applied for and 12 tables along the length of Miles Buildings as indicated on the application but not to extend beyond 2.3 metres in width towards the centre of the passage, as Members considered it unreasonable in highway terms, to extend the use of the highway beyond half its available width in all the circumstances and on the basis of the representations made.

#### **79 LICENSING PROCEDURE - HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE DRIVERS HEARING PROCEDURE**

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

#### **80 APPROVAL OF VEHICLE FOR PRIVATE HIRE - MR HUGO ALLEN KING**

The Sub-Committee considered the report which sought approval of a Chrysler Voyager vehicle for use as a Private Hire Vehicle. The vehicle falls outside of the age requirements stipulated in the current Private Hire Vehicle licence conditions.

The applicant was present. He confirmed he had read and understood the procedure for the meeting.

The Licensing Officer presented the report and stated that the vehicle fell outside the age requirements as stipulated in the private hire vehicle licence conditions. He added that Officers could exercise some discretion when the vehicle was between

two and five years old. This vehicle was just over five years old, therefore the application was presented to the Sub-Committee for determination. The vehicle had been visually inspected by the Licensing Officer and was in very good condition.

Members adjourned the meeting to inspect the vehicle, then the meeting continued.

The applicant put his case and was questioned. He stated that currently he had three vehicles and this vehicle would replace the one that had broken down with a serious defect and had a high mileage. The Chrysler Voyager was in good condition with very low mileage for a car of its age and he would convert it to LPG like his other vehicles. He then made a closing statement.

Following an adjournment it was

**RESOLVED** that the Chrysler Voyager be approved for use as a Private Hire Vehicle subject to the standard conditions.

#### Reasons for decision

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, the Human Rights Act 1998 and case law. Having inspected the vehicle Members found it to be suitable in size, type and design to be granted a licence and therefore delegated authority to the Licensing Officer to issue a Private Hire Vehicle licence subject to the necessary safety inspections and certification.

#### **81 HACKNEY CARRIAGE (TAXI) AND PRIVATE HIRE PROPRIETORS' HEARING PROCEDURE**

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

#### **82 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 items(s) of business 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."

#### **83 APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE AND CONSIDERATION OF CAUTION OBTAINED DURING TERM OF PREVIOUS LICENCE**

The Sub-Committee considered the report which sought determination of an application by Mr ADN for the grant of a combined hackney carriage/private hire driver's licence.

The applicant was not present. He had requested that the application be heard in his absence. Members had to consider whether or not to proceed in Mr ADN's absence. The Licensing Officer stated that Mr ADN had not been able to attend the

Sub-Committee on two previous occasions. Members took account of the lengthy email exchange in which the applicant consented to it proceeding in absence and his acknowledgment that it might. Having confirmed that all the information forwarded by Mr ADN was available to them, Members concluded that the matter should therefore proceed in his absence.

The Licensing Officer presented the report, outlined the application and the details of the caution. He circulated the email exchange with the applicant and a letter from the National Illegal Money Lending Team. Members took some time to consider the documents.

The Licensing Officer then called witnesses. The witnesses put their case and were questioned.

Following an adjournment it was

**RESOLVED** that a hackney carriage/private hire driver's licence not be granted to Mr ADN.

#### Reasons for decision

Members had to consider Mr ADN's application for a licence to drive hackney carriage and private hire vehicles. In doing so they had to consider a Police caution obtained for the offence of lending money without a licence and a final warning letter sent to him by the licensing authority. Members therefore had to consider whether Mr ADN was a fit and proper person to hold a licence.

Members had to consider whether or not to proceed in Mr ADN's absence. Members took account of the lengthy email exchange in which he consented to it proceeding in absence and his acknowledgment that it might. Members having confirmed that all the information forwarded by Mr ADN was available to them concluded that the matter should therefore proceed in his absence.

Members took account of Mr ADN's written statement, the information provided by the National Illegal Money Lending Team and the final warning letter. Members also heard from the witnesses who gave an account of their experiences of Mr ADN's illegal money lending activity.

Members found that Mr ADN was arrested under suspicion of engaging in activities that require a licence when not a licensee pursuant to s39(1) Consumer Credit Act 1974 and accepted a caution. In the paperwork Mr ADN stated the offence resulted from a misunderstanding of the law and said his accountant told him it should be alright. Mr ADN also apologised for what he says was a mistake saying nothing was done with criminal intent. Mr ADN also stated that since his arrest he had become a victim because drivers stopped paying, cars got damaged and one was fraudulently transferred into another's name. Mr ADN stated as a result his business had gone downhill and being able to work would help provide his family and young child with a minimum of financial support. None of Mr ADN's witnesses attended.

Members found that Mr ADN had been a licensee since November 2007 and whilst not attracting complaint from the public the Licensing Team had been contacted by

Police in relation to his vehicles on many occasions. For example, Mr ADN had accrued 15 penalty points on his DVLA driving license 12 for failing to provide the identity of a driver and on three occasions his vehicles had been operated without a MOT certificate thereby rendering any insurance cover void. There had also been a number of incidents where drivers of his vehicles had collided with other road users and no insurance details were provided. Members found in all the circumstances that Mr ADN had failed to live up to his responsibilities as a licensee and had put the public at risk in so doing.

With regard to the caution and cash forfeiture Members took account of the representation from the National Illegal Money Lending Team and the witnesses, Members noted that the evidence leading to the caution arose from a complaint which led to searches of 2 addresses revealing a vast amount of documentary evidence pointing towards large scale illegal money lending and a large sum of cash hidden on one premises, namely £9,980 which was subsequently forfeited. Whilst the National Illegal Money Lending Team concluded Mr ADN was lending to fellow drivers and extorting money from them, Members noted that the caution was given because Mr ADN was a man of previous good character.

In determining the matter Members had regard to the Local Government (Miscellaneous Provisions) Act 1976, the Council's Policy, the Human Rights Act 1998 and case law. Members noted that case law stated hearsay evidence is admissible, the merits of a caution/conviction must not be reviewed or re-opened, the economic wellbeing of the applicant is irrelevant and in considering any action the protection of the public is of the utmost importance. Accordingly the weight attached to the evidence was a matter for Members to decide and with regard to accepting a caution Members noted Mr ADN must have first admitted an offence and agreed to be cautioned. Members also noted that whilst it is not a criminal conviction a caution can be used as evidence of a person's bad character.

Members took the matters and issues of this morning very seriously, some of which they hoped never to come across again. In particular an extremely dim view was been taken of his illegal money lending operation which had connotations of a loan shark and organised criminal activity calling into disrepute the good name of the taxi trade in Bath and North East Somerset. Whilst having taken account of Mr ADN's representations Members concluded that committing an offence out of extreme foolishness rather than a deliberate act was no basis to find he was a person fit and proper and given the sums involved and wide spread nature of his operation concluded it could not be described as arising out of any foolishness or mistake. Accordingly, and given the nature and seriousness of all the matters before them, Members found he was not a fit and proper person to hold a license and they have heard nothing to persuade them that a member of their family or a loved one would be safe in a taxi owned or driven by Mr ADN therefore the application was refused.

The meeting ended at 12.59 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**