

BATH AND NORTH EAST SOMERSET COUNCIL

LICENSING SUB-COMMITTEE

Wednesday, 27th June, 2018, 10.00 am

Councillors: Les Kew (Chair), Deirdre Horstmann and Will Sandry

Officers in attendance: Carrie-Ann Evans (Deputy Team Leader (Barrister)), John Dowding (Senior Public Protection Officer), Terrill Wolyn (Senior Public Protection Officer) and Ian Nash (Public Protection Officer (Licensing))

1 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer advised those present of the procedure.

2 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

3 DECLARATIONS OF INTEREST

There were none.

4 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

5 MINUTES : 26TH APRIL 2018

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

6 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 shall be excluded from the meeting for agenda item 8, and that the reporting of that item 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.

7 TAXI PROCEDURE

The Chair drew attention to the procedure to be followed for the item 8.

8 APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVER'S LICENCE

Application reference: 18/00496/TAXI

The Applicant 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 Disclosure and Barring Service certificate relating to the Applicant, a written statement from him and two references. The hearing was adjourned to allow Members time to study these documents.

After the adjournment the applicant stated his case and was questioned by Members.

Following a further adjournment the Sub-Committee **RESOLVED** that the applicant was a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence, and delegated authority to the Licensing Officer to issue the licence, subject to the satisfactory completion of the remaining stages of the licensing process.

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.

The applicant stated that his convictions were a long time ago when he exercised bad judgment and is something he regrets. He explained that he has had twenty years in the work place since without any problems and that he now has a clean driving licence.

Members took account of the applicant's oral representations, his written statement, references and balanced these against the information contained in the Disclosure and Barring Service Certificate.

Members noted that the applicant had remained conviction free for well in excess of the period expected in the policy and had positive references from two senior colleagues at his current employer who spoke of his pleasant nature, reliability, honesty and professionalism.

In all the circumstances Members find the applicant to be a fit and proper person to hold a combined Hackney Carriage/Private Hire Driver's Licence as he has remained conviction free for some time and it is evident from his references that he has the qualities that members would expect from a combined Hackney Carriage/Private Hire licensed driver.

Authority is delegated to the public protection officer to issue the licence subject to the applicant completing all steps required by the licencing process.

9 LICENSING ACT PROCEDURE

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

10 APPLICATION FOR A PREMISES LICENCE FOR THE SPIRIT OF THE HORSE, BIG TOPS, FRONT TRIANGLE, BATH RACECOURSE, LANSDOWN, BATH BA1 9BU

Applicant: Equestrian Theatre Ltd, represented by Neville Wilson

Responsible Authority: Avon and Somerset Police, represented by Paul Kendall
(Police Licensing Officer)

The Senior Public Protection Officer presented the report.

Mr Wilson stated the case for the applicant. He said that the applicant had organised this kind of show on many occasions in the UK, including in most of the London Boroughs. It was not a “booze-up”, but an entertainment for families. Parents would be able to go to the designated area and purchase an alcoholic drink before the show and during the interval, just as in a theatre bar. Only holders of a ticket for the performance would have access to the bar, which would be located in the foyer, where a variety of other items would also be for sale.

The Chair asked what would be available in the bar. Mr Wilson said there would be no draught beer, but bottled beers, wines and spirits.

Mr Kendall stated the case for the Police. He said that in the view of the Police the conditions in the operating schedule were not specific enough to be enforced. The police had therefore proposed conditions addressing each of the four licensing objectives, as set out on pages 62-63 of the agenda. Discussions had been held with the applicant, who had agreed to accept these conditions.

In response to a question from the Chair Mr Wilson confirmed that the applicant was willing to accept the conditions proposed by the Police.

A Member asked Mr Wilson whether staff training records would be actually kept at the premises, as one of the Police conditions would require. Mr Wilson replied that this is done as a matter of course and there is no problem about it, because staff are employees of the applicant and not casuals.

The Senior Public Protection Officer suggested that part of the condition proposed by the Police that “... the DPS will ensure that all staff are trained in implementing ‘Challenge 25’ was otiose because there is already a mandatory condition to this effect. The Chair responded that the Sub-Committee would consider this during the adjournment.

Neither party wished to sum up.

Following an adjournment, the Sub-Committee **RESOLVED** to grant the application, subject to the conditions detailed below. Authority was delegated to the Public Protection Officer to issue the licence.

Full Decision and Reasons

Members have had to determine an application for a new Premises Licence for Spirit of the Horse, Big Tops, Front Triangle, Bath Racecourse, Lansdown, Bath, BA1 9BU. 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 they must only do what is appropriate and proportionate in the promotion of the licensing objectives based on the information put before them. Members noted that each application is considered on its own merits.

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.

The Applicant

Mr Wilson on behalf of the applicant addressed members and indicated that the Spirit of the Horse is about the theatre rather than the consumption of alcohol.

The Applicant confirmed in writing (Annex D to the report to Committee) and Mr Wilson confirmed verbally that they agreed to all of the measures recommended by the Police in their written representations regarding the proposed Premises Licence.

The Interested Parties

There were no objections from interested parties.

Responsible Authorities

A representation had been received from the Police expressing concern that although the event itself is relatively low risk the applicant's proposals failed to adequately promote all four of the licensing objectives due to the steps offered in the application form being ambiguous, non-specific and in the police's view, unenforceable. Consequently, the police recommended additional measures to mitigate those concerns and those were set out in Annex C to the report. The Police confirmed by e-mail that they were proposing a Challenge 25 policy for the avoidance of any doubt and 2 SIA trained security staff.

In oral submissions to the Committee, Mr Kendall (Police Licensing Officer) on behalf of Mr Cannon confirmed the measures that they had already set out in writing.

Members

In reaching their decision Members noted that in relation to paragraph 9.42 of the Statutory Guidance their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what is intended to be achieved.

Members carefully considered the representations made on behalf of the Applicant and the Police.

Members noted the Applicant had agreed in writing (Annex D to the report) and verbally to all the measures proposed by the Police (Annex C to the report) in the promotion of all four of the licensing objectives, albeit there was some overlap in what was suggested by the police, what was offered by the applicant in their operating schedules and what would be a mandatory condition if the licence is granted.

Members considered that any effect of the Premises Licence on the licensing objectives would be addressed by the conditions consistent with the proposed operating schedule and the additional conditions proposed by the Police (as clarified in relation to 2 SIA trained security staff and the challenge 25 policy) which members found to be appropriate and proportionate.

Accordingly, members resolved to approve the application subject to the mandatory conditions, conditions consistent with the operating schedule and conditions proposed by the Police across which there should be no duplication and with the mandatory conditions taking precedence.

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

11 TABLES AND CHAIR PROCEDURE

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

12 APPLICATION FOR PERMISSION TO PROVIDE FACILITIES ON THE HIGHWAY FOR RECREATION/REFRESHMENT AT HANDS TEAROOM, 1 ABBEY STREET, BATH BA1 1NN

Applicant: Hands Tea Room, represented by Laurence Swan (owner)

Objector: Highway Maintenance, represented by George Bottin (Principal Engineer Highway Maintenance & Improvement)

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

The Licensing Officer presented the report. Highways had submitted additional information before the hearing, comprising 2 extracts from the London Gazette of 1966 and 1967 about a local traffic order and photographs. The Applicant had

submitted additional information before the hearing comprising photographs and written representations.

Mr Swan stated the case for the applicant. He said that he was the owner of Hands Georgian Tea Room and of the Bath Bun in Abbey Green and was a standing member of Bath Business Improvement District and ran the Abbey Trader's Association. He said that the area around the Tea Room had been blighted by the redevelopment in the Abbey Area and the complete closure of York Street, which he understood was going to be rebuilt. Traders wished to find ways of reanimating the area by increasing its attractiveness. He thought that locating tables and chairs outside the Tea Room would help to do this. At present Abbey Street, in which the Tea Room was located, was closed from York Street to Abbey Green. There had been bollards at the York Street end, since 1966 and now there were bollards across York Street at the Junction with Stall Street. Upper Borough Walls was also closed to traffic from 10:00 to 17:00. Mr Swan referred to an occasion in July when a lady had fallen outside the Crystal Palace public house and medical staff had been able to attend her after parking their vehicle near to the bollards in York Street, showing, he submitted, that there was adequate access for emergency vehicles. He said that vehicles had occasionally been parked in York Street, having gained access to Abbey Street before 10:00. He said that he was confident that Hands Tea Room would be able to comply with the terms of tables and chairs permit, if granted, as he already has a permit for the Bath Bun. He referred to the photographs submitted by Highways showing an Openreach van in the area where he proposed to site the tables and chairs, and said that he not witnessed vehicles parked there on more than four occasions during the time that he had been there.

A Member asked whether the tables and chairs area outside Hands would be surrounded a barrier. Mr Swan said that he would like the area to be surrounded by a small barrier to control the flow of customers to the tables and chairs and so reduce risk.

In reply to questions from the Chair Mr Swan stated:

- a full menu would be available, cold and cooked, including baguettes, cream teas and hot and cold drinks; high teas are very popular
- the premises did hold an alcohol licence, but alcohol sales are very small; he understood that alcohol could not be served outside
- there would be waitress service to the outside area

Mr Bottin presented his case. He said that objections to the application had been raised by an officer in his team who was very familiar with the location. The ground of the objection was that the existing traffic regulation order made exemptions for vehicles connected with building works and like operations, the removal of obstructions and road works, and for statutory undertakers and emergency services. Therefore there are a number of parties who have vehicle access rights to the location. The control measure relating to the rising bollard also contains exemptions for a number of parties, including those mentioned above. Even though the location is situated in a cul-de-sac, exempted vehicles still have rights of access to it, so there are potential conflicts. An officer had visited the location and taken photographs of

vehicles making deliveries and undertaking work there. Therefore a tables and chairs permit for the location would be in conflict with the existing traffic regulation order and raise safety concerns.

In response to questions from Members Mr Bottin stated:

- it was impossible to predict how often exempted vehicles would require access to the area
- he could not explain why none of the bodies whose vehicles were exempted from the order had submitted objections.

Mr Swan asked Mr Bottin if he agreed that ambulances were too wide to enter the street. Mr Bottin said this was a valid point. He had made some enquiries and understood from Parks that the flower pole planters in the street had been authorised by Highways.

The Chair asked Mr Swan how quickly the tables and chairs could be moved. Mr Swan said this could be done in under ten minutes.

The Chair asked Mr Bottin what major problems might occur if the permit were granted. Mr Bottin replied that as senior Highways officer he saw it as his responsibility to assert the rights of the users of the highway in the light of the Traffic Regulation Order in place. If in future the exemptions were removed by due process, as had happened at other locations, he would not object to the application.

The parties summed up.

Mr Bottin said that there was a Traffic Regulation Order in place and that that if the permit were granted it could impact on the efficient operation of emergency vehicles.

Mr Swan said that there were already fixed obstructions in place that would impact on the operation of emergency vehicles.

Following an adjournment the Sub-Committee resolved to delegate to the Public Protection Officer authority to issue the permit with the standard terms and conditions.

Reasons

Members have had to determine an application to place 4 tables along with 16 chairs on the highway outside of the premises at 1 Abbey Street, Bath, BA1 1NN. In doing so they took account of the Highways Act 1980 and the Human Rights Act 1998 and balanced the representations from the Highways Department against the application.

In reaching a determination members had to decide whether the application was likely to obstruct the free passage of pedestrians, cause a public nuisance in highway terms or be a hazard in its real sense.

Members had regard to the oral representations and additional written representations of the Applicant Mr Laurence Swan. Mr Swan addressed the objection from the Highways Department saying that the purpose behind the

application was to animate the area and bring footfall. He said that since he had been there he has not seen traffic driving up and down the highway upon which he proposed to locate the tables and chairs and noted that there were bollards in place at either end of that area. It was his submission that fire engines and ambulances are too wide to be able to get through because of the bollards that were in situ. Mr Swan indicated that they had done risk assessments related to the safe use of the proposed tables and chairs. In response to the photographs from the Highways Department showing the BT Openreach van in the area where the tables and chairs are proposed to be sited, he expressed the view that this was an anomaly that he had observed only 4 times in the 20 years he had been at the premises. On questioning, Mr Swan indicated that in an emergency he thought they could remove the tables and chairs in a matter of minutes.

Members had regard to the written objection from Highways Department as well as two photographs illustrating a BT Openreach van and the two extracts from the London Gazette related to the Traffic Order. Members also heard the oral representations of George Bottin Principal Engineer Highways Maintenance and Improvement from the Highways Department who said that the objection related to the Traffic Order which came into force on 6th February 1967. The Traffic Order provided for a number of parties to still have vehicular access to the relevant section of Abbey Street being vehicles used in connection with building and the like operations; removing obstructions; road works; statutory undertakers' works; and fire brigade; ambulance or police purposes. In summary, his submission was that there would be a conflict between the Traffic Order and the proposed tables and chairs which he thought could have safety implications for people using that street.

Mr Swan questioned Mr Bottin regarding the width of an ambulance which Mr Swan submitted was 2.5 metres wide and a Fire Engine which he suggested is bigger whereas the bollard that was in place restricts the highway width to 2 metres. Mr Bottin seemed to accept that that may be so. Mr Bottin did say in addressing the committee that he was looking into the siting of the single bollard at the Abbey Green end of the proposed area.

Members carefully weighed in the balance the representations of the Highways Department and the Applicant and in the exercise of their discretion decided to grant the application as they did not find that it was likely to obstruct the free passage of pedestrians, cause a public nuisance in highways terms or be a hazard in its real sense. Their reasons for this included the fact that:

- Under section 115E of the Highways Act they may grant permission for facilities on the highway where a traffic order is in place even where that order still permits certain classes of vehicle to use the highway (section 115A applies).
- They noted that pedestrians should be able to pass and re-pass without obstruction on the pavements either side of the area where it is proposed to site the tables and chairs
- They noted the presence and layout of permanent bollards at either end of the proposed location of the tables and chairs

- They noted that it would be a standard condition of the permit that the holder should not cause any unnecessary obstruction of the highways or danger to persons using it and should not permit persons to gather so as to cause a nuisance or annoyance or danger to any person lawfully using the highway and that any breach of such condition may be dealt under section 115K of Highways Act 1980.

Authority is delegated to the Public Protection Officer to issue the permit with the attachment of the standard terms and conditions.

The meeting ended at 12.19 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services