

BATH AND NORTH EAST SOMERSET

LICENSING SUB-COMMITTEE

Thursday, 10th December, 2020

Present:- Councillors Manda Rigby (Chair), Steve Hedges and Karen Warrington

Also in attendance: Carrie-Ann Evans (Deputy Team Leader, Legal Services), John Dowding (Lead Licensing Officer) and Terrill Wolyn (Senior Licensing Officer)

45 WELCOME & INTRODUCTIONS

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

46 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

There were none.

47 DECLARATIONS OF INTEREST

Councillor Steve Hedges informed the Sub-Committee that regarding agenda item 9, the driver concerned had sent him a friend request via Facebook which he did not accept and deleted.

The driver replied that he had done this by mistake.

48 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR

There was none.

49 MINUTES OF PREVIOUS MEETINGS: 29TH OCTOBER 2020 AND 12TH NOVEMBER 2020

The Sub-Committee approved the minutes of 29th October 2020 and 12th November 2020 as a correct record.

50 LICENSING PROCEDURE

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.

51 NEW PREMISES LICENCE APPLICATION: KETTLESMITH BREWING COMPANY LIMITED, 15 NEW BOND STREET, BATH. BA1 1BA

The Senior Licensing Officer outlined the application to the Sub-Committee. She explained that it was for a new Premises Licence for Kettlesmith Brewing Company Limited in respect of 15 New Bond Street, Bath, BA1 1BA.

She informed the Sub-Committee that a representation of objection was received within the statutory period from Fire Safety Officer John Brown on behalf of Avon Fire & Rescue Service. The objection relates to the Public Safety licensing objective.

She stated that in response to the representation the applicant had submitted revised floor plans and site plan. She said that additional information in respect of the proposed use of the premises had been provided by the applicant and that measures had been agreed with Avon Fire & Rescue Service to mitigate their original concerns.

The proposals are as follows:

1. That the revised plan replaces the original plan submitted
2. That the following additional conditions are added to the Premises Licence:
 - There will be no public access to the first, second or third floors
 - There will be no sale of alcohol for consumption on the premises
 - There shall be no café within the premises
3. That all reference made to a café within the application be removed, by removing the following measures offered within the operating schedule of the application:
 - Alcohol sold inside the café will be only to customers who are seated; and
 - Supervising and guiding visitors to the shop and café, at all times.

Evan Metz stated the case for the applicant and was questioned by Members. He explained that the premises were to be used as a licensed pop up shop, a project consisting of local artisan producers of wine, gin and cider. He said that the shop would seek to replace the option of having a stall in the regular Christmas Market that is usually held in Bath.

He stated that public access will only be to the ground floor of the premises and that goods would be stored within the basement area.

Decision and reasons

Members have had to determine an application for a new Premises Licence at 15 New Bond Street, Bath. 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

Mr Metz addressed members on behalf of applicant. He indicated to members that they sought to licence the venue as part of a temporary pop-up shop which consists of a collection of local artisan producers who have come together to run a shop during November and December. He noted that they are required to have a licence to sell alcohol being a brewery but have others selling wine, gin and beer. He explained that they sought to licence the entire building for sale of alcohol with the idea being always to do off sales not on sales.

Mr Metz confirmed to Members that they propose to sell alcohol from ground floor only but will store alcohol in basement. There will be no public access to the upper floors of the building and the sale of alcohol is only for consumption off premises mostly selling gift items and gift packs. He indicated that there was no intention to do a café or any selling of alcohol for consumption on the premises.

Mr Metz confirmed that the applicant agrees to the measures as agreed in writing with the fire service at Annex F to the report.

Responsible Authority

John Brown Fire Safety Officer on behalf of the Avon Fire & Rescue Service had made a representation objecting to the application on the basis of the Public Safety licensing objective. He did not appear before the LSC but members had a copy of his written representation and were able to review the constructive dialogue that had taken place between him and the Applicant. Members noted that in response to the representations, the Applicant had submitted revised floors plans and site plan, as well as additional information and measures in relation to the proposed use of the premises, to further promote the Public Safety licensing objective.

Members further noted that measures had been offered by the applicant and agreed to by the Avon Fire & Rescue Service to mitigate the Responsible Authority's original concerns.

Members were pleased to note the productive dialogue that had taken place between the Applicant and Responsible Authority. Members reminded themselves however that they must be satisfied that the measures offered were appropriate and proportionate in the promotion of the Public Safety licensing objective; Members were so satisfied.

Consequently, Members grant the application as applied for subject to the substitute plans, with the additional conditions offered by the applicant and with the amendments to the operating schedule to remove reference to the café.

Authority is therefore delegated to the licensing officer to issue the licence with plan substitutions detailed below, conditions consistent with the operating schedule save for the changes indicated below and the additional conditions as follows:

- The revised plan at Annex D of the report replaces the original plan submitted and will be attached to the premises licence.
- There will be no public access to the first, second or third floors of the premises
- There will be no sale of alcohol for consumption on the premises
- There shall be no café within the premises.
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All measures offered within the operating schedule that relate to a café to be removed namely:

- Alcohol sold inside the café will only be to customers who are seated; and
- Supervising and guiding visitors to the shop and café, at all times.

52 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.

53 CONSIDERATION OF FIT AND PROPER - 16/03431/PHOP

The Lead Licensing Officer presented the report to the Sub-Committee. He explained that the report invited the Members to consider whether the operator before them remains fit and proper to hold a Private Hire Operators Licence issued by this authority.

He stated that the Sub-Committee is asked to consider the matter, determine the issue and take any action it may consider suitable after hearing any representation from the operator or any representative acting on their behalf.

He said that the Sub-Committee is asked to consider the revocation of the operator's combined Hackney Carriage/Private Hire Drivers Licence by the Council's Licensing Sub-Committee and to consider the impact of the resolution on the operators continued status as a fit and proper Operator of Private Hire vehicles in the area of this Authority.

He informed them that the operator currently holds a Private Hire Operators Licence issued by this authority with an expiry date of 31st October 2021 and records indicate that the operator was originally licensed as a Private Hire Operator on 20th November 1998.

He explained that the operator appeared before the Council's Licensing Sub-Committee on the 29th October 2020 in relation to his Combined Hackney Carriage/Private Hire Driver's Licence after the Council received complaints alleging inappropriate contact with females and comments of a racist nature made to passengers.

He added that the Licensing Sub-Committee also considered two breaches of licensing conditions which were recorded on the drivers' file. The Sub-Committee considered representation from two complainants who attended the meeting and representation made by the driver in response to the complaints.

He stated that the Licensing Sub-Committee resolved to revoke the driver's combined Hackney Carriage/Private Hire Drivers Licence.

The operator addressed the Sub-Committee. He asked why the matters referred to on 29th October 2020 were being discussed again and whether any complaints had been received specifically regarding his Operator's Licence.

The Chair replied that the revocation of his Combined Hackney Carriage/Private Hire Driver's Licence had triggered the review of his Private Hire Operators Licence.

The operator asked if the Sub-Committee had received the three character references he had submitted.

The Chair replied that they had been received and read by the Sub-Committee.

The operator stated that he had held his licence for many years and that the complaints he had received were whilst he had been a driver for Uber. He said that he had bookings in place for Christmas Day and that he had kept his car clean during the ongoing pandemic.

He added that he operates a school run and that the parents concerned are happy with him as an operator.

The Lead Licensing Officer asked if the incident from July 2016 occurred from a booking made directly under his Operators Licence. He added that in this incident he had used the contact details of a prospective female passenger to contact her via Facebook Messenger and her mobile telephone. He said that when she said she did not think this was a good idea and stopped responding the operator began contacting her more persistently via messages and phone calls.

The operator acknowledged that this incident did relate directly to his Operators Licence.

The Chair asked what he would do now if he did receive any further complaints directly from customers.

The operator replied that he would advise any complaints to be addressed directly to the Licensing department. He added that he had been an operator for over 30 years and that in his opinion a lot of Uber customers do make complaints to attempt to get

a free ride. He said that whilst working for Uber he had also received a number of five-star ratings.

In his closing statement, the operator said that should further complaints be made against him he would refer them to the Licensing department. He said that he believed he was currently providing a good service to customers within Zone 2 and that he was doing the best job that he could.

Following an adjournment, the Sub-Committee **RESOLVED** that the Private Hire Operators Licence of the operator concerned be revoked on the basis that he is no longer fit and proper.

Reasons

Members have had to consider whether or not an operator remains fit and proper to continue to hold a Private Hire Operator's Licence following the revocation of his combined Hackney Carriage/Private Hire Driver's Licence. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members reminded themselves that each case is considered on its own merits and whilst they note that the operator's separate driver's licence had been revoked they would carefully consider how and to what extent, if at all, the conduct that led to that revocation has a bearing on his fit and proper status as an operator. They had regard to the operator's oral representations, the three character references he had provided and balanced these against the report before them.

Members heard from the operator who indicated that he had been working for himself as an operator for many years and he has had no complaints. He explained that he has customers coming back as repeat bookings, his vehicle is clean and tidy, and he is always smart. He said the last four complaints against him were from Uber whilst acting as a driver and not as an operator but attributed these to customers 'trying it on' in order to get a free ride, aside from those complaints he said he had a number of 5 star reviews. He said that if a customer has a complaint, he directs them to the licensing department.

Upon questioning the operator conceded that the 2016 complaint involving a prospective female passenger was in relation to him as an operator.

Members had regard to the fact that they were permitted by law to suspend or revoke an operator's licence on the grounds of (i) any conduct on the part of the operator which appears to them to render him unfit to hold an operator's licence and/or (ii) on the basis of any other reasonable cause. There are other grounds upon which a licence can be suspended or revoked but they are not applicable on the facts of this case. Members noted that they also had the option to take no further action or issue a formal written warning if the facts of the case warranted it.

In this case the operator is a 'one-man band' and is therefore responsible for taking bookings including obtaining all the personal and other information required from a passenger to make their booking as well as fulfilling the booking in his capacity as a driver.

Whilst there is no judicially approved test of fitness and propriety for private hire operators, they did find the commentary from 'Button on Taxis' of some assistance when considering fit and proper in this context. Notably, the following commentary:

“When a booking is made for a private hire vehicle, the person booking that vehicle will provide a significant amount of generally personal information to that operator. This can include the times that they leave and return to their home, where they are travelling, the frequency of those visits, whether they are going on holiday for a period of time and so on. It is essential that the recipient of that information, the operator, ensures that the information is not used for criminal or other unacceptable purposes” (para 12.35 p. 630).

In relation to questions that could be posed when determining fit and proper Mr Button proposes as follows:

‘Would I be comfortable providing sensitive information such as holiday or business plans, movements of my family or other personal information to this person and feel safe in the knowledge that such information will not be used or passed on for criminal or unacceptable purposes?’ (para 12.35 p.630)

“Although operators are unlikely to have direct contact with an individual passenger and certainly do not have the same degree of control over a passenger as a driver does, it is important that they are a person of integrity. They receive and then hold personal information as outlined above and the public must have confidence in their honesty.” (para 12.36 p. 631).

Members considered the Minutes and Reasons from the LSC hearing on 29th October 2020 as well as the representations from the operator and thought about to what extent, if any, the complaints that led to that revocation were relevant to the matter before them today.

In relation to the licensee's failure to return a DBS certificate to the licensing authority in 2015 and failure to report a speeding offence in 2016, when taken in isolation these are not sufficiently serious to warrant a suspension or revocation but are administrative failings which weigh in the balance against the operator when considering fitness and propriety.

Members determined that the conduct from July 2016 in relation to a prospective female passenger and February 2019 in relation to a female passenger, was relevant to the operator's fit and proper status as they show how he has used the personal information of passengers; this is of direct relevance to his conduct as an operator.

In relation to the July 2016 incident he was acting in his capacity as an operator and had used the contact details of a prospective female passenger to contact her via Facebook Messenger and mobile telephone. His contact had strayed beyond the professional into the personal namely, asking to be friends, suggesting they meet up and when she said she did not think this was a good idea and stopped responding, contacting her more persistently via messages and phone calls. An operator should be trusted to use the contact details of passengers only for the purely professional

purposes for which they are intended and not for unacceptable purposes. Initially the operator denied to Members that there had been any complaints against him in his capacity as an operator but eventually conceded on questioning by the Lead Officer that this was a complaint against him as an operator.

The February 2019 incident involved a female passenger who had left her mobile telephone in his vehicle and came after a clear written warning regarding his conduct for the 2016 incident. Rather than dealing with the lost phone in accordance with the lost property condition on his licence or Uber's lost property policy, he examined the bank cards contained in the phone case and used the details on those cards, to search for the person on Facebook. He managed to track her down and attended her place of work to return the mobile telephone. When a colleague said they would pass it on he refused as he wanted to hand it back personally. When he handed the phone back in person eventually, he asked the female to be his Facebook 'friend' which she did not want. The female described this behaviour in her complaint to Uber as "inappropriate, just a bit creepy". Whilst this conduct took place when acting in his capacity as a driver Members consider it to be relevant to his fit and proper status as an operator as it demonstrates again how he handles personal information related to his passengers. Members find his dealings to be unacceptable and not what you would expect from an operator or driver, and he was unable to follow conditions and policy which is an integral part of being a fit and proper operator.

Members found that there had been three incidents of a racist nature concerning the operator between September 2019 and June 2020, albeit when acting in his capacity as a driver. Each incident involved him using words and expressing opinions that were sufficiently serious and offensive to his passengers that they resulted in complaints and in relation to the most recent incident had a lasting emotional impact on the complainant. Members find that this conduct is relevant to his fit and proper status as an operator as they go to his character and conduct, and operators and drivers alike are expected to deal with passengers in a way that is not racist.

For the reasons identified herein, the Members' written decision of 29th October 2020 is of relevance to this decision and rather than rehearsing that decision here, it is adopted and will be appended to this decision. Members did not find the operator's account or presentation before them to be credible. Whilst members do not consider he would pass on personal information for criminal purposes they are not satisfied that the operator will not use personal information of passengers for unacceptable purposes straying from the professional to personal, nor are they satisfied that he can always act with integrity. They are not satisfied that he can conduct himself in a way that promotes equality to all members of the community and all potential customers, something that they would expect from all operators.

In the light of these reasons Members do not consider that the operator is fit and proper to continue to hold his operators' licence. Accordingly, authority is delegated to the Lead Officer to revoke the licence with notice.

Reasons of the decision made by the Licensing Sub-Committee on 29th October 2020

Members have had to consider whether a Licensee remains fit and proper to hold a combined Hackney Carriage/Private Hire Driver's licence in the light of a number of complaints that had been made against him and his conduct as a BANES licensed driver. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law and the Council's Policy.

Members reminded themselves that each case is considered on its own merits. They had regard to the licensee's oral representations and written representations and balanced these against the report before them together with the first-hand account of a complainant and her witness.

The complainant in relation to the June 2020 incident indicated to members that she was not aggressive in any way and it is difficult to hear that this is not the first time that the Licensee has been challenged about racist comments. What he did was really abhorrent and impacted her, particularly for him to use that word so comfortably and demean her experiences as a woman of colour. She explained though, that she really retained her composure until she got out of the car. She explained to Members that using the word that he did should be enough to make a person lose their licence in her opinion. She explained that she does not even use that word even though technically she could. The complainant described getting out of the car shaking and was only comfortable arguing her piece because her partner was there. She expressed the view to Members that the knowledge that other women have made accusations is really worrying, as there are people who could get in his car that are much more vulnerable. When questioned by members the complainant said she felt 8 out of 10 in terms of vulnerability, 10 being the most.

The complainant's witness echoed the comments of his partner and supported her account.

In addressing Members, the Licensee described some of what the complainant had said as lies and claimed he was not racist towards her whatsoever. He did say however that he was really sorry for what had happened that day. His account was that the complainant had lost it with him and started swearing after he said he disagreed with the protests. He accepted referring to the incident in Barbados and saying that word once. He indicated to Members that he had not been driving for Uber for 6 months now, he had really changed things and was doing his job to the best of his ability. He informed Members of a role he had been appointed to recently, in the context of describing how he had made positive changes in his life.

The Licensee was invited to address members on the other complaints against him. Notably, in doing so he indicated to Members that in the second complaint of a racist nature the passengers were Chinese. He claimed that both sets of passengers in relation to the first and second racist incident were drunk.

Members noted that they have to be satisfied on the balance of probabilities that the Licensee continues to be a fit and proper person to hold a Combined Hackney Carriage/Private Hire Driver's Licence.

Members found that the Licensee's failure to return a DBS certificate to the licensing authority in 2015 and failure to report a speeding offence in 2016, for which he received 4 penalty points on his BANES Driver's Licence, are relevant matters on his record to weigh in the balance against the Licensee being fit and proper. Members expect BANES licensed drivers to comply with the conditions and requirements of their licence as these requirements help to assure the Council of the safety of the travelling public in relation to a driver.

Members were concerned to note two complaints against the Licensee in relation to his conduct with female passengers; the first complaint was received in July 2016 and the second in February 2019. In relation to the 2016 complaint members found that the Licensee had made inappropriate contact with the prospective female passenger via Facebook Messenger and mobile telephone. It was evident from the messages that Members had seen, and which were not disputed by the Licensee in his interview with the licensing authority, that the Licensee's conduct had strayed beyond professional into personal namely, asking to be friends, suggesting they meet and when she said she did not think this was a good idea and stopped responding, the contact via messages and phone calls became more persistent. In the Licensee's interview with the licensing authority in relation to this incident,

Members noted that he sought to minimise the incident saying initially it was "*only [a] friendly meet up request*" he eventually conceded that he was "*feeling down and looking for something more than friendship*" and having initially denied calling the female "*I did not call blank at any time, no number taken at all*" he eventually went on to concede "*two calls at most*". The Licensee received a formal written warning from the licensing authority for this incident in August 2016 and was given clear advice as follows: "*I would take this opportunity to advise you that you do everything in your power to avoid any further complaints or allegations being made against you. Especially such as the allegation as discussed on the 17th August 2016.*"

Members found that notwithstanding this clear advice, there was a further incident in February 2019 where the Licensee's conduct strayed beyond the professional into the personal again. A female passenger left her mobile telephone in the vehicle and rather than taking it to the police in accordance with his licensing condition, or taking it to the lost property at Uber's local office, he decided to examine the bank cards contained in the phone case and search on Facebook to try and identify the person. He tracked down their place of work and took the phone there the following day. On his own account he refused to leave the phone with a member of staff as he wanted to hand it back personally.

Upon doing so he asked the female to be his friend on Facebook which she said in her complaint to Uber was "*inappropriate, just a bit creepy*" and she said that she "*no longer wants rides with him from now on*". The Members noted that the Licensee had not learnt from the warning he received in 2016 and this was inappropriate and unprofessional conduct that they would not expect from a BANES licensed driver.

Members found that there had been three incidents of a racist nature concerning the Licensee. The first took place in September 2019, the second March 2020 and the third in June 2020. In relation to the September 2019 incident the Licensee had made a comment about "*English drivers*" and the passenger who reported the incident to Uber explained that they "*were concerned that [the Licensee] appeared*

subconsciously racist". In his own explanation of the incident to the licensing authority, the Licensee denied any recollection of such an incident initially but admitted that he *"may have said something jokingly but not meaning it... We just joke about English drivers being better and things, that's all, there's no malice in it... I know we have to be careful about what we say with the way things are going now. Well you have to be careful what you say to customers as they might not find it funny as you don't you who you're picking up so you have to be careful."* The complaint also related to the Licensee not following the Sat Nav and taking a more costly route.

The Licensee accepted he does not follow the Uber Sat Nav all the times as it is often wrong.

In relation to the March 2020 complaint, the passenger reported to Uber that the Licensee made inappropriate and racist comments regarding Coronavirus namely he said that the Chinese were to blame *"because they eat bats"*. The passenger described the Licensee's conduct in their complaint as *"completely misinformed and blatantly ignorant comments"* and that they were appalled and offended. In written response to this complaint the Licensee recalled the journey but his account was that *"I said I had seen in the paper that day that the case was thought to be someone eating bats in China – but who would know?"* He denied saying as alleged and had no recollection of the passengers being upset. In oral submissions before the LSC the Licensee indicated that the passengers in question were Chinese.

Members found the complaint from June 2020 to be particularly concerning. They read the account of the complainant supported by her witness. They have had the benefit of hearing their oral account today via Zoom as well.

The complainant is a person of colour to whom the Licensee said that the Black Lives Matter protests were irrelevant and would not change anything and that violence was not the answer. He also claimed the UK is not racist and so there is no point protesting. The complainant tried to explain to the Licensee that the BLM protests were peaceful and tried to provide the Licensee with statistics on UK racism.

The complainant reports that the Licensee said that those who were subject to racism in the UK deserved it to which the complainant provided examples of her lived experiences of racism. At the end of the journey the Licensee signalled the passengers to stay in the car and he recounted a story to them from when he visited Barbados. This culminated in him explaining to his passengers how a waitress had used that word in a phrased to his Dad, he then went on to repeat the sentence with that word to the passengers again.

Members have intentionally decided not to include the complete word in their reasons as they do want to perpetuate its use and do not condone its use in any way. There is no dispute between the complainant and Licensee as to the word used. Members find it deeply troubling that the Licensee used this word in front of his passengers not once but twice and they prefer the complainants account about the number of times it was said.

Whilst the Licensee has been licensed for over 25 years Members consider that for the last 5 years since the complaint relating to failure to return the DBS Certificate, the Licensee has displayed a course of conduct which has escalated in terms of

seriousness and frequency. He has not learnt from warnings and does not seem to be capable of acknowledging his inappropriate behaviour or addressing it. Members prefer the accounts of the complainant and her witness who they found to be clear, credible and compelling. They find the complainants' accounts in relation to all incidents to be more credible. The Licensee, they have not found to be credible as his accounts are not consistent and he seeks to minimise his conduct and apports blame to others.

Members had regard to what the licensee had said about making changes but found that the Licensee's remorse seems to relate principally to the prospect of losing his licence and livelihood rather than genuine remorse or understanding of what he has done. At no time did he ask the complainants if there was anything he could do to make it better. Members noted that their principal consideration is whether or not he is fit and proper as opposed to the impact on his livelihood.

Members have asked themselves if they would allow their friends, loved ones and indeed all members of the community to travel alone in a vehicle driven by this person and on the balance of the probability, Members' answer to this question is 'no'.

The Licensee asked members to consider a probationary period of 6 months where they could assess his conduct. This is not an option that is open to them in law, but they would not consider this appropriate and proportionate in all the circumstances in any event.

Members did not consider a suspension to be appropriate and proportionate as they did not believe a suspension would serve to change his behaviour which was part of his character.

Members do not take a decision to revoke a driver's licence lightly but in all the circumstances and for the reasons expressed herein Members find the Licensee not to be a fit and proper person to continue to hold a Combined Hackney Carriage/Private Hire Driver's Licence and accordingly members determine that the Licensee's licence should be revoked in accordance with section 61 (2A) Local Government (Miscellaneous Provisions) Act 1976.

Authority is delegated to the Public Protection Officer to issue the notice accordingly.

The meeting ended at 12.30 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services