

# **BATH AND NORTH EAST SOMERSET COUNCIL**

## **LICENSING SUB-COMMITTEE**

Thursday, 25th August, 2022, 10.00 am

**Councillors:** Rob Appleyard (Chair), Michael Evans and Sally Davis

**Officers in attendance:** Carrie-Ann Evans (Team Leader (Barrister), Legal Services), John Dowding (Lead Officer - Licensing), Geoff Cannon (Public Protection Officer (Licensing)), Wayne Campbell (Public Protection Officer (Licensing)) and Enfys Hughes (Democratic Services Officer)

### **55 EMERGENCY EVACUATION PROCEDURE**

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

### **56 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS**

There were no apologies or substitutions.

### **57 DECLARATIONS OF INTEREST**

There were no declarations of interest.

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

There was no urgent business.

### **59 MINUTES OF PREVIOUS MEETING: 11TH AUGUST 2022**

**RESOLVED** that confirmation of the minutes of the meeting held on 11<sup>th</sup> August 2022 be deferred to a future meeting.

### **60 LICENSING PROCEDURE**

The Chair confirmed all parties had received the procedure for the meeting and outlined it.

### **61 VARIATION OF A PREMISES LICENCE - LOCH FYNE**

In attendance – Matthew Phipps (TLT Solicitor) accompanied by Kyle Miller and Debbie Windybank from Greene King.

It was confirmed that two lots of additional information had been submitted to all parties before the meeting.

The Licensing Officer presented the report for consideration of a variation of the premises licence for Loch Fyne.

Matthew Phipps (Solicitor) explained that the premises had been shut for two years with the pandemic and subsequent lockdowns and the offer had evolved over that

time but there would be no change to the hours or the activity. The variations include a reconfiguration of the layout, creating storage, providing coverage to the outside terrace and to remove archaic conditions. He confirmed that there were no objections from the responsible authorities. The one objector expressed concern that the applicant's proposals could undermine the Prevention of Crime and Disorder and Prevention of Public Nuisance Licensing Objectives. However, he explained that the objection did not outline anything specific to this premises. It also referred to other residents being affected, however, there were no other objections.

He outlined additional conditions that could be considered appropriate:

- Membership of Nightwatch (or a similar organisation where it exists)
- Premises laid out to tables and chairs
- Having an incident book/log
- Notices displayed reminding customers to respect the neighbours
- Challenge 21
- Training for all staff
- A refusal log/register

Councillor questions followed and answers were as follows:

- There was no representation from responsible authorities and no issues in relation to Challenge 21 and age being a concern at the premises
- The Licensing Officer confirmed a few changes appropriate for the additional conditions, that Challenge 21 was more usually a concern in relation to nightclubs, any alcohol sold off-premises to be in sealed containers, the licence holder to supervise the incident register, the signage in respect of consideration for neighbours to be by the exits and be an appropriate size, photo ID with suitable signage, staff training to be commensurate with their duties
- Important to be consistent with other licensed premises in the vicinity, though each application should be considered on its merits
- There were no representations in respect of children and any significant risk or harm.

The meeting was adjourned for Members to consider their decision and reasons and it was RESOLVED

### **Decision and reasons**

Members have determined an application to vary a Premises Licence at Loch Fyne Restaurant, 24 Milsom Street, Bath, BA1 1DG. In doing so they have taken into consideration the Licensing Act 2003, Statutory Guidance, the Council's Policy which includes the Cumulative Impact 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 proposed premises falls within BANES' Cumulative Impact Area which means that pursuant to the Council's policy there is a rebuttable presumption that for variations relating to "on trade", premises 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. "On trade" means the sale of alcohol for consumption on the premises.

Members noted that the applicant had submitted 2 lots of additional information prior to the hearing, comprising, a 20-page brochure, wine, food and cocktail menus and a 4-page document illustrating how these menus will be presented.

Matthew Phipps, solicitor for the applicant, addressed Members in oral representations and indicated that there is no proposed change in licensable activities or timings. He explained to Members that the existing bar is towards the front of the premises and the proposed bar will be further back to allow a bigger space, but this is not an attempt to introduce vertical drinking and the premises will remain a seated premises laid out to table and chairs. Mr Phipps indicated to Members that the proposed removal of the waiter/waitress condition was not to suggest that this service will not be available at all times, it was to allow a customer to go to the bar if they want. Food will be available at pretty much all trading times, but the applicant wants to allow some wind down time, without being in breach of the current condition for substantial food to be available during all trading hours. Mr Phipps noted that Members will wish to ensure residents are not disturbed by the operation of the premises and the applicant wants to ensure that guests are not disturbed given that they are the closest residents of the operation. Mr Phipps highlighted to Members that there were no representations from Responsible Authorities and in addressing Members on the Council's Cumulative Impact Policy, he submitted that the proposal would not undermine the Licensing Objectives at all, nor would it add to the Cumulative Impact being experienced.

In addressing the live representation from Mr Bedding, Mr Phipps respectfully indicated that the objectors' concerns seem to relate to late night bars and poor behaviour in George Street and do not go to the application and premises. Mr Phipps noted that the objector had raised no concerns related to Protection of Children from Harm or Public Safety.

Mr Phipps indicated to Members that there were a number of additional conditions that the applicant was prepared to offer, to address any residual concerns, if Members consider them to be appropriate and proportionate.

There was a written representation of objection from Mr William Bedding who is a resident that lives one street away from the premises. He objected to the application on the basis of the Prevention of Crime and Disorder and Prevention of Public Nuisance licensing objectives. Mr Bedding's concerns related to the number of people drinking to excess in the area of George Street, which he said leads to a higher likelihood of disorder within any establishment. He described frequent fights and shouting in this area. In terms of public nuisance, he referred to crowding in the area of George Street, not dispersing, arguing and cheering into the early hours of the morning. Mr Bedding acknowledged that the applicant cannot be held responsible for what happens on the street outside but expressed concern that this premises, being in close proximity to George Street, would create noise and disturbance.

Mr Bedding indicated that the notice of the application was not outside of the building for 28 consecutive days however, the licensing officer Geoff Cannon indicated that Licensing had looked into this matter and were satisfied that the requirements of the legislation had been complied with and the notice was on display for the requisite period.

Members noted that this application must be considered on its own merits, and that they have regard to evidence related to *these* premises.

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 noted that there had been no valid representations from Responsible Authorities which includes the police, Highways, Planning, Environmental Protection and the licensing authority.

Members noted that there were no proposed changes to the licensable activities nor timings and they were satisfied that the operation of the premises will not add to the cumulative impact already being experienced.

Members determined that the conditions that the applicant seeks to remove from the licence are either archaic or covered by alternative conditions pursuant to the Licensing Act 2003 and therefore, it is no longer appropriate or proportionate for them to remain on the licence. Members were satisfied however that the conditions offered by the applicant in oral submissions were appropriate and proportionate in the promotion of the licensing objectives of Prevention of Crime and Disorder and Prevention of Public Nuisance.

Authority is therefore delegated to the licensing officer to issue the licence as applied for subject to the following additional conditions offered or agreed to by the applicant:

- All alcohol sold for consumption off the premises shall be supplied in sealed containers.
- The Premises Licence Holder shall require the Designated Premises Supervisor or in his/her absence other responsible person to keep an incident/refusal register in which full details of incidents are recorded. The register is to be kept on the premises at all times and shall be produced to an authorised officer of the police or licensing authority when requested.
- Signage requesting patrons to be considerate to neighbours should be conspicuously displayed inside and outside entrances/exits.
- A Challenge 21 proof of age scheme shall be adopted, implemented and advertised at any premises. An accepted form of photographic identification shall be requested before any alcohol is sold to any person who appears to be under 21 years of age. Acceptable proof of age shall include identification bearing the customers photograph, date of birth and integral holographic mark or security measure. Suitable means of identification would include PASS approved proof of age card, photo card driving licence and passport.

- Staff training. All staff to be trained in the prevention of underage sales to a level commensurate with their duties. The training should be clearly documented and signed and dated by both the trainer and the member of staff receiving it. The documentation shall be available for inspection on request by an authorised officer of the licensing authority or police.
- Publicity materials notifying customers of the operation of Challenge 21 scheme shall be displayed at the premises including a Challenge 21 sign which may align with the premises' corporate branding, at the entrance to the premises and where practicable at each point of sale.

## **62 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.

**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.

## **63 CONSIDERATION OF FIT AND PROPER – 22/00349/TAXI**

In attendance – Licensee.

The Licensing Officer presented the report to the Sub-Committee (LSC). He advised Members to consider the matters, determine the issues and take any action they may consider suitable after hearing the representation from the Licensee.

The Licensee explained the circumstances why he had not submitted his insurance documents on time and apologised for this. He added it was on a fleet policy not individual so he was not aware the documents had not been received by the Council. It was confirmed that the onus was on the proprietor to submit these documents not any third party. It was also confirmed that the policy had not changed in this respect since 2018. The Licensee confirmed he had been in business for 30 years and it was the first time this had happened. He had had up to 40 vehicles licensed and he was only human and made an odd mistake. Since COVID all the processes went on-line and he was not good with computers and sent his documents via his insurance broker. He had not checked if they had been received. The Licensing Officer confirmed that he had also missed submitting his MOT certificate on time so there were repeated breaches which was why the Licensee had been referred to the Licensing Sub-Committee. He confirmed that each Licensee attended the office and received and signed a copy of the terms and conditions, so the Licensee did have a copy of the terms and conditions of his licence.

The meeting adjourned for Members to consider the representations.

All parties were invited back into the meeting. The Chair stated to the Licensee that it was important for him to understand the severity of the situation, his cumulative

behaviour of repeated breaches over a few years in non-compliance with not submitting his documents on time and losing his Operator's licence. Earlier he had only referred to the current breach when he had not submitted his insurance documents on time. The Sub-Committee wanted him to have every opportunity to explain all of the issues not just having not submitted his insurance documents on time.

At the request of the Chair, the Legal Adviser went through each breach of the licensing terms and conditions with the Licensee, in order to give him the opportunity to provide his account. On 23<sup>rd</sup> January 2020 the Licensee had received a final warning for failure to explain a gap in MOT cover. He had been advised that if he came before the Sub-Committee again he would be at risk of revocation of his licence.

The Licensee stated he always told the truth and did not lie but this was dismissed. He added that he was under a lot of pressure, not sleeping as his livelihood was at stake. He was more concerned about his drivers. He stated he had asked for a full copy of the terms and conditions of the licence. The Licensing Officer confirmed that there was a copy on file of the terms and conditions signed by the Licensee. The Licensee said there was an issue with the Midsomer Norton taxi rank that he wanted Members to be aware of so had wanted to be referred to the Licensing Sub-Committee. He stated he had not been allowed to tell the truth about the gap in MOT cover.

The Licensee was advised to tell the Sub-Committee what he needed to and to tell the truth. He said on three occasions they (the Sub-Committee) had gone against him. He made the odd mistake and apologised for this and had been in the profession for 30 years. He took the rules seriously and learned from his mistakes. The Chair confirmed he had a final warning in 2020 and yet had further breached his terms and conditions.

In relation to losing his Operator's Licence in 2021, the Licensee explained that he had made payment to a driver though he had not produced his invoices. The driver went to court and had received a County Court Judgement (CCJ) against him. He did not think he should have lost his Operator's Licence for this. It had taken the Licensee a long time to find a solicitor and he had offered to make a further payment to the driver but this had been refused and since that time he had no further response. Since then he had made changes and did not make any payments to his drivers without them producing invoices. He was hoping to go back to court for the decision to be overturned.

The Licensing Officer stated that the solicitor had reported a few months ago that no payment or offer had been received by the driver.

The Licensee confirmed that he undertook home to school contracts and that he had spoken to the Transport Team and he did not need an Operator License to do this work.

In respect of the current breach, not producing his insurance documents on time, the Licensee said he had some problems with his insurance broker and would not use them next year. He repeated that he was not good with computers and paperwork and no longer had office staff to help him with this. The Licensing Officer noted the

Licensee did 35 school runs and asked him if he had provided all the required paperwork to Passenger Transport to obtain the contracts. The Licensee said he had no problems with the Transport Section.

One of the Councillors on the Sub-Committee said that he was disturbed by the Licensee's comment that if he was honest, he would be dismissed and as far as the Councillor was concerned, the Licensee was saying that to all of them. The Councillor asked if the Licensee was satisfied that the Committee would make their own judgement and consider if he was fit and proper? The Licensee responded that he was and had spoken the truth on 3 previous occasions but had not been believed. He said that was what he was referring to.

The Licensee produced an email from his Solicitor about the CCJ payment which was read out to the Sub-Committee. This confirmed that the cheque sent by the Licensee to the driver had still not been cashed and was now out of date. The Solicitor stated that this was extremely strange. The payment had been processed via the Solicitor.

The Sub-Committee adjourned to consider the decision and it was RESOLVED

### **Decision and reasons**

Members have had to consider whether or not the licensee is fit and proper to continue to hold his combined Hackney Carriage/Private Hire Driver's licence in the light of failures to comply with the conditions of his Hackney Carriage Proprietors licences. 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 heard from the Licensee in oral representations and he was taken through each of his previous appearances before Committee in January 2020, October 2021 and January 2022 and asked to give Members his account in relation to the matters leading to those appearances.

In relation to his appearance before Committee in 2020 the Licensee indicated that he had been in business for 30 years at that time and had approximately 40 vehicles. He asked Members to consider the relatively minor amount of non-compliance in this context. He explained that he did understand the warning that he received at that time from the Committee and felt he was compliant going forwards.

The Licensee addressed the matters which led to the revocation of his Private Hire Operator's licence in October 2021 and his position was that he did not think his licence should have been revoked as a result of one financial matter.

In relation to his non-compliance with the insurance conditions which led to his appearance today, the Licensee's account was consistent with his e-mail dated 22.05.22 at Annex B, namely that he had asked his insurance broker to forward the certificates and they had failed to do so. He accepted before the Committee that this was his responsibility and that he fully understood this now, he apologised for this failing.

The Licensee explained to Members that he did appreciate the severity of his appearance before them and it has had an impact upon him. He promised Members

that there would not be a further breach of conditions and if there was, he would voluntarily give back his licence.

Members noted that:

- on 23.01.20 the Licensee received a final warning from the Licensing Sub Committee in relation to his Hackney Carriage/Private Hire Driver's Licence as a result of a failure to produce an MOT certificate within 7 days of the previous MOT expiry date and repeated failures to provide an explanation to the licensing authority for a gap in MOT cover. This was in breach of his Hackney Carriage licence conditions. The warning given by the Licensing Sub Committee was clear and unequivocal:

- He should be in no doubt that he must comply with the terms and conditions of his Private Hire and Hackney Carriage Licences with BANES.

- He should comply with requests of the Public Protection Team (or any successor team) in the timescales given in the administration and enforcement of his licences.

- He should be civil and professional in his dealings with the Council and its representatives.

- If he comes before the LSC again in relation to his future conduct, against this background, he will be at strong risk of revocation.

- On 07.10.21 the Licensee's Private Hire Operator's Licence was revoked at Licensing Sub Committee following a complaint relating to financial conduct. In the circumstances, Members did not consider him to be fit and proper to continue to hold a Private Hire Operator's Licence.

- On 16.05.22 the Licensee received a warning and 4 penalty points on his BANES licence for failure to produce certificates of insurance for two Hackney Carriage Vehicles almost 3 months after they should have been supplied to the Council. It is not the responsibility of the licensee's insurance broker to provide copies of the certificates to the Council, this is the Licensee's responsibility.

Members carefully considered the written and oral representations made by the Licensee however he has a number of breaches of condition on his record which seem to arise out of carelessness at one end of the spectrum to wilful non-compliance for misguided motives at the other end. He had his operator's licence revoked in October 2021 on the basis that he was no longer considered to be fit and proper in that role. He has two previous appearances before this Committee where his fit and proper status as a Combined Hackney Carriage/Private Hire Driver has been examined. On the first of those occasions, he received a clear and unequivocal warning in relation to his conduct, that warning is noted above.

Compliance with the conditions on his licences is vital so that the Council can be assured that there is no danger to the safety of the public when travelling in his BANES licensed vehicles.

In this case, when looking at this Licensee's track record as a whole, Members have concluded that the Licensee does not heed warnings nor act on advice, given to ensure the safety of the travelling public, and his conduct has not improved,

consequently Members can no longer be satisfied that he is fit and proper to hold a combined Hackney Carriage/Private Hire Driver's Licence.

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

## **64 CONSIDERATION OF IMPACT OF MEDICAL DIAGNOSIS - 21/02531/TAXI**

In attendance – Licensee.

The Licensing Officer presented the report to the Sub-Committee. He advised Members to consider the matter and determine any action. The Licensee had informed Licensing that there had been a change in treatment for his medical condition. The DVLA process allows for a suspension from driving and a reinstatement of a licence, provided the licensee can demonstrate that the treatment is well-managed and the licensee is fully aware of the condition and takes appropriate steps to monitor it.

In response to questions the Licensee stated the treatment had started a month ago and he needed to be monitored for another 2 months. The treatment was manageable. He recognised the importance of public safety as a licensed driver in respect of his medical condition

The Licensing Officer stated that the Licensee had done everything as he should and there had never been any complaints about him. The Chair commented that there was a process laid down in respect of medical conditions like this.

Following an adjournment it was RESOLVED

### **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 the disclosure of a medical condition. In doing so Members took account of the Local Government (Miscellaneous Provisions) Act 1976, Human Rights Act 1998, case law, Council's Policy, conditions and the linked DVLA guidance.

Members reminded themselves that each case is considered on its own merits and regarding medical fitness the licensee must meet the higher standard of medical fitness for Group 2 (Vocational).

Members heard that the Licensee had notified licensing in advance that he would be commencing insulin therapy, and this had been confirmed by his Practice Nurse.

Members noted the conditions attached to a Combined Hackney Carriage/Private Hire Driver's licence recommend immediate revocation of a licence on public safety grounds in these circumstances. Members also note however, that the DLVA process allows for suspension from driving and a reinstatement of a licence, providing the 3-stage process has been completed before a Licensee may resume driving.

Members gave credit to the Licensee for voluntarily ceasing to drive whilst recording the required blood sugar levels, for his clear acknowledgement of the importance of public safety and they commend him for his conduct in dealing with his medical

circumstances. In all the circumstances Members find it reasonable and proportionate to follow the DVLA guidance and depart from the Policy so that a suspension is imposed here instead of revocation.

Accordingly, Members suspend the licence until the satisfactory conclusion of the 3-stage process. Authority is delegated to the Licensing Officer to reinstate the licence on receipt of a satisfactory consultant's report and to issue future licences on a 12 monthly basis subject to satisfactory medical reports.

## **65 CONSIDERATION OF FIT AND PROPER – 22/00326/TAXI**

In attendance – Licensee and his wife.

The Licensing Officer presented the report to the Sub-Committee. He advised Members to consider the matters, determine the issues and take any action they may consider suitable after hearing the representation from the Licensee.

The Licensee and his wife presented his case together. They stated they had to amend the insurance mid-term to add a family member and had to do it on the phone before they went on holiday. Once they were away and he forgot about it. Previously the Licensee had worked for someone else and they had sorted all the paperwork out, sending reminders to submit insurance and MOT certificates. The Licensee acknowledged that he should have known as he signed the terms and conditions.

With respect to the MOT, that was also before a holiday and when the vehicle had failed the MOT it had not been used as a taxi. However, when they needed to be picked up from the airport a family member had used the vehicle to collect them. He thought he was able to drive as the car was less than 3 years old so would not usually need an MOT. The Licensee used a different garage for the MOT, for the repairs he had used the main dealer so had driven the vehicle between the two garages. Though his car was relatively new it had been recalled to the main dealer 3-4 times. The Licensing Officer confirmed that any taxi needed an MOT after one year and was considered a taxi 24 hours a day 365 days of the year. Moving forward the Licensee confirmed he would be working for his previous employer again. This way there would be no further breaches as he would get daily reminders for insurance and MOT documents. The Chair stressed that ultimately the responsibility was the Licensee's.

The Licensing Officer confirmed that he had dealt with the Licensee for a long time and he always engaged with him and was good with the public.

Following an adjournment for Members to consider their decision it was RESOLVED

### **Decision and reasons**

Members have had to consider whether or not the Licensee is fit and proper to continue to hold his combined Hackney Carriage/Private Hire Driver's licence in the light of failures to comply with the conditions of his Hackney Carriage Proprietors licences. 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 heard from the Licensee and his wife in oral representations who acknowledged the errors that had been made and provided Members with credible explanations, albeit wrong, for what had happened. They explained that they had put measures in place to ensure that this would not happen again, and these measures include daily reminders, for each of the 7 days prior to expiry of their MOT, for example.

Members noted that the Licensee had been licensed with the authority since 2010 and acknowledged the Lead Licensing Officer's comments that in all other respects he works well as a licensed driver.

Members found the Licensee's account to be credible and they noted that he has now put measures in place to ensure his future compliance with the conditions on his BANES licences. In these circumstances they are satisfied that he remains fit and proper to continue to hold his Combined Hackney Carriage/Private Hire Driver's Licence however, they issue a final warning in the strongest possible terms that:

- He must abide by all of the conditions on his BANES license(s) and this is his responsibility.
- He must remember that whilst his vehicle(s) is licensed it is a taxi 24 hours a day 365 days a year and he must be mindful of how this may affect the MOT and insurance position.
- If he appears before the LSC again then he is at risk of revocation.

The meeting ended at 4.07 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**