

# Licensing Committee

Friday, 26th July, 2013

2.30 - 4.10 pm

Attendees	
<b>Councillors:</b>	Garth Barnes (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Rob Reid, Charles Stewart and Jon Walklett

## Minutes

**1. APOLOGIES**

Apologies were received from Councillors Stennett, Thornton and Whyborn

**2. DECLARATIONS OF INTEREST**

Councillor Chard declared a personal and prejudicial interest in agenda item 9 as a licence holder and owner of a licensed premise.

**3. PUBLIC QUESTIONS**

None received.

**4. MINUTES OF MEETING HELD ON 5 JULY 2013**

Resolved that the minutes of the meeting held on 7 June 2013 be agreed and signed as an accurate record.

**5. MINUTES OF SUB COMMITTEE MEETINGS**

None.

**6. STREET TRADING APPLICATION**

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda. An application had been received from Mr Brabin for street trading consent to sell hot and cold food and drink from a mobile catering bicycle. The proposed trading location of the mobile catering bicycle was between the High Street junction meeting Berkeley Street and the full length of the Promenade including Montpellier Street and Montpellier Walk. The requested trading period is for 6 days per week between 10 am and 5 pm. The Senior Licensing Officer reported that the consultation had raised objections and reminded Members that the application should comply with the provision of the Street Scene policy.

Mr Brabin was invited to address the committee. He said that his service would add to the Cheltenham street scene in a new and innovative way. It would provide good quality food on the run. Similar street traders were operating in Worcester, Stratford and Bristol and were proving to be popular. Having been brought up in the area he had a good understanding of Cheltenham and recognised the importance of tourism to the economy. He did not believe that his catering bicycle would be an eyesore and it would not have any advertising on it. He made reference to the Green Coffee Machine which, whilst initially

receiving a lot of criticism, was now very much part of the town's street scene and he hoped that his bicycle could add to the street scene in the same innovative way.

Members raised the following issues:

- Whether the liquid in the containers he would be carrying would be hot or cold and whether it would be dependent on a power supply; in response Mr Brabin confirmed that only cold drinks would be sold but hot locally sourced organic gourmet wraps would be offered, an example given was hot duck wrap with soy and wasabi mayonnaise
- Confirmation was sought as to whether a safety check was required by a registered person to ensure the gas canisters on the catering bicycle would be used to heat 2 gas stoves, were safe. In response Mr Brabin confirmed that he would ensure that the gas canisters were all properly tested and certified and that they were secure. Members remained slightly uncomfortable that there would be lit gas ranges in view. They asked whether environmental health had commented on this. The Senior Licensing officer confirmed that environmental health had been consulted but they had not submitted any comments. Mr Brabin stated that many traders were using the same system and confirmed that he had had his public liability insurance for £5 million approved
- In response to concerns about the appearance of the bicycle which in some Members views could potentially detract from the street scene, he assured members that this would be of a high aesthetic standard. He explained that the photograph shown in the appendix to the report was of the bicycle when it was purchased from eBay. He explained the bicycle still required more renovation but he was reluctant to do this prior to gaining the consent to trade
- In response to concerns conveyed in the objections regarding the mobility of the proposed service, Mr Brabin explained that he was very open to using certain fixed pitches where trading would be acceptable; he did not intend to park his bicycle directly outside a business selling similar products but his idea was to sell quick food "on the run". He did however say that competition was good for business. In terms of objections relating to slowing down traffic he said he would not cause problems. Members believed that the traffic flow could be affected up to the Queens Hotel due to the incline.
- Members felt that the selection of sites should be suitable for the public and not in any way impede the pedestrian flow and not be located next to a premise selling similar products. In response Mr Brabin reiterated that he would be happy to negotiate a number of static fixed pitches; it was never his intention to just park anywhere undesignated. The Senior Licensing Officer advised the members that should static fixed pitches be a preferred option Mr Brabin would be required to submit a new application in which a full consultation would take place, The new application would be referred to the Licensing Committee to be determined.
- In response to a question on hygiene Mr Brabin confirmed that he had a hand washing system and had been advised that alcoholic wash wipes were appropriate. He also confirmed that he would wear gloves when serving food. In response to a question with regard to waste disposal to

avoid littering, Mr Brabin confirmed that he had a waste bin attached to the front of his bicycle and he would encourage his customers to use it

- Members welcomed his enterprising spirit and asked what experience he had in the catering business. In response he stated that he had 7 years experience having worked as a chef and in and around the food environment. He also had his food handling certificate. In response to a question on his current employment, Mr Brabin confirmed that he was currently a bar manager in the town.

A member proposed an adjournment to consider the application. Upon a vote Members adjourned at 3 pm.

The meeting was reconvened at 3.30 pm.

An amended proposal was brought to the Committee. The Committee was recommended to approve the application subject to a limited area of operation from Boots corner to the Queens Hotel. If approved this consent would be reviewed in March 2014. The design should be submitted to officers before trading and be accepted by officers.

Members voted on this amended proposal.

Voting for : 4

Voting against: 3

**RESOLVED that the application for a street trading consent be granted subject to a limited area of operation from Boots corner to the Queens Hotel.**

## **7. PRIVATE HIRE DRIVER REVIEW**

The Senior Licensing Officer introduced the report as circulated with the agenda. This was a review of Mr John James Carr's Private Hire Driver's Licence. She explained that Mr Carr was subject to a vehicle inspection on 4 July 2013 by Gloucestershire Constabulary. The vehicle had been stopped due to the officer witnessing the driver using his mobile phone whilst driving. On inspection of the private hire vehicle, the officer found that three tyres were worn below the legal limit and photographs of these were attached at Appendix A of the report. Mr Carr's vehicle licence was immediately suspended but Mr Carr replaced his tyres on 5 July and following the inspection of the vehicle by Licensing Officers, the suspension notice was lifted. Members were being asked to ascertain whether they judged Mr Carr to be a fit and proper person to continue to hold a Private Hire driver's licence.

Mr Carr was invited to address the committee. He explained that he was new to taxi driving. He had replaced his previous set of tyres with part-worn tyres as at the time he was saving up to fund his son's trip to Kenya and therefore could not afford brand new tyres. He believed these part-worn tyres would tide him over until his MOT in July. He was however surprised that the tyres had deteriorated extremely quickly. He highlighted to the Licensing Committee that he had worked for GCHQ for 26 years and had held the position of team leader in that employment. He had brought up three children on his own following the death of his wife. This was his first mistake he had made in the 40 years he had been driving and he regretted this. He had not recognised that tyres would wear

more quickly now that he was driving more than 1000 miles a week compared to under 100 miles week prior to taking up taxi driving. He had looked at the car a few days previous to the inspection but they did not appear to be in such a bad condition. He later revealed that this was not a close inspection since his car had been parked across the road from his house and he had only looked at them from this distance. He proposed to the Licensing Committee that he report to the police once or twice a week to ensure his current tyres were within the legal limits. Mr Carr added that he worked unsocial hours every night and in undesirable areas of the town.

When asked about his mobile phone offence he explained that he had not heard anything further. The Senior Licensing Officer explained that it did take time for the offence to be referred to the court and Mr Carr would receive a summons in due course and may receive penalty points on his DVLA licence.

Members questioned why Mr Carr, having known that his tyres were not perfect, and having received comments from other drivers in the business, had not acted and change the tyres. He reiterated the fact that he did not expect the part-worn tyres to deteriorate so quickly. Members were also concerned that Mr Carr had not noticed the extreme deterioration in the 3 tyres which would have been obvious even at a distance. Mr Carr replied that he was a new taxi driver and had not appreciated the rate of tyre wear. It was apparent to Members that it was likely that the part worn tyres were only just over the legal limit when purchased and asked whether Mr Carr had contacted the supplier. In response Mr Carr said he knew he had made a mistake and would not purchase from the same supplier again and as such had not made contact with them since the incident.

Further to receiving legal advice about Mr Carr's proposal to get the police to check the condition of his tyres on a weekly basis, the Chair confirmed that this was not a feasible proposal and that it is the responsibility of the driver to check that their tyres were safe.

Members were advised that they had two options as set out in the report:-

1. that Mr Carr's private hire driver's licence be continued with no further action because the Committee was satisfied that Mr Carr was a fit and proper person to hold such a licence; or
2. that Mr Carr's private hire driver's licence be revoked as the Committee considered Mr Carr not to be a fit and proper person to hold a private hire driver's licence because he failed to maintain his vehicle in a roadworthy condition

Members voted for these two options:

Option 1 : Voting for: 0, Against 7, Abstentions 0

Option 2: Voting for: 7, Against 0, Abstentions 0

The Committee also considered whether in accordance with section 61 (2A) of the Local Government (Miscellaneous Provisions) Act 1976 the decision to revoke should take immediate effect.

**RESOLVED that Mr Carr's private hire driver's licence be revoked as the Committee considered Mr Carr no longer to be a fit and proper person to**

**hold a private hire driver's licence because, despite warnings from other drivers, he failed to maintain his vehicle in a roadworthy condition. In the interests of public safety the licence should also be revoked with immediate effect because of failure of Mr Carr to maintain his vehicle in a roadworthy condition and the potential implications of this on public safety.**

#### **8. PRIVATE HIRE DRIVER REVIEW**

The Senior Licensing Officer introduced the report which had been circulated with the agenda. This was a review of Mr Tohur Uddin's Private Hire driver's licence. Mr Uddin was subject to a vehicle inspection on 7 July by Gloucestershire Constabulary his vehicle was found to have two tyres worn below the legal limit. Mr Uddin's vehicle was immediately suspended but Mr Uddin replaced his tyres on 8 July and following the inspection of the vehicle by Licensing Officers, the suspension notice was lifted. She explained that the vehicle was licensed to Mr Graham Foley who owned a number of licensed private hire and hackney carriage vehicles. Mr Uddin was contractually obliged to ensure that the tyres and brakes were maintained in a roadworthy condition at all times. Members were asked to determine whether they judged Mr Uddin to be a fit and proper person.

Mr Uddin was invited to address the committee. He explained that he had leased the car from Mr Foley two months before the incident happened. He fully accepted responsibility for the tyres and admitted that he should have inspected them more thoroughly. When asked whether the tyres were extremely worn when he had taken over the car from Mr Foley, Mr Uddin admitted that he hadn't checked them. He subsequently also realised that tyres do not wear like that within two months. In response to a question Mr Uddin replied that he had been driving this car for 2 months and his mileage was 500-700 miles per week. Members noted that a minimum tread depth of 3mm was specified in the rental agreement and the tyres were the responsibility of the driver. Mr Uddin confirmed that he had a good relationship with Mr Foley.

When asked whether at the time of the vehicle inspection Mr Uddin had passengers on board, Mr Uddin confirmed that the police had advised him to take the passengers home and then to stop work. He confirmed that the tyres had been very bald but he was not aware by how much under the limit they were. He also informed members that he may get 6 points on his licence for the offence.

Some members were of the view that it was Mr Foley who should bear responsibility for the condition of the tyres as they appeared to be defective at the point when Mr Uddin took on the lease of the car. It was suggested that Mr Foley be written to as it would appear that the tyres had not been checked for their roadworthiness.

The Principal Solicitor noted the comments regarding Mr Foley but explained that the driver was responsible for the condition of the car.

When members discussed the possibility of requiring Mr Uddin to undertake a road safety awareness test, the Principal Solicitor explained that this test generally related to the rules of the road, i.e. speeding and perhaps was not

relevant in this case, although members could add the assessment as a requirement.

Members were advised that they had two options as set out in the report:-

1. Mr Uddin's Private Hire driver's licence be continued with no further action because the Committee is satisfied that Mr Uddin is a fit and proper person to hold such a licence, or

2. Mr Uddin's Private Hire driver's licence be revoked as the Committee considers Mr Uddin is not a fit and proper person to hold a Private Hire driver's licence because he failed to maintain his vehicle in a roadworthy condition.

Members voted for these two options:

Option 1 : Voting for: 4, Against 2, Abstentions 1

Option 2: Voting for: 2, Against 4, Abstentions 1

**RESOLVED that**

**Mr Uddin's Private Hire driver's licence be continued with no further action because the Committee is satisfied that Mr Uddin is a fit and proper person to hold such a licence**

**9. CONSULTATION RESPONSE TO THE PROPOSAL TO ADOPT THE LATE NIGHT LEVY IN CHELTENHAM**

Councillor Chard retired from the Chamber at 16:05 due to his personal and prejudicial interest in this item.

The Principal Solicitor introduced the report on behalf of the Senior Licensing Officer who had to withdraw to deal with a previous applicant. This report outlined the Committee's response to the proposal to adopt the late night levy in Cheltenham.

Members voting : In favour-5;Against-0; Abstentions:1

**RESOLVED**

- 1. That the response be approved; and**
- 2. It be agreed that the response be submitted as part of the consultation**

**10. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

None.

**11. DATE OF NEXT MEETING**

6 September 2013

Garth Barnes

**Chairman**