

Licensing Committee

Friday, 1st November, 2013
2.30 - 4.50 pm

Attendees	
Councillors:	Garth Barnes (Chair), Andrew Chard, Anne Regan, Rob Reid, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett and Roger Whyborn
Also in attendance:	Amelia Byres, Senior Licensing Officer Vikki Fennell, Solicitor

Minutes

1. APOLOGIES

Councillor Seacome

2. DECLARATIONS OF INTEREST

Councillor Barnes declared an interest in agenda item 13 – Allocation of Christmas Street Collection Dates as a trustee of Cheltenham Animal Shelter. In the absence of the Vice-Chair, he indicated that he would not speak or vote but would remain in the Chamber to conduct the debate.

Councillor Walklett declared an interest in agenda item 13 – Allocation of Christmas Street Collection Dates as he had a friendship with Dancing Ken Hanks (Cheltenham Animal Shelter) and he was a Member of the Mayor's Charity Committee. He would not speak or vote and would leave the Chamber for consideration of this item.

3. PUBLIC QUESTIONS

None

4. MINUTES OF MEETING HELD ON 4 OCTOBER 2013

Resolved that the minutes of the meeting held on 4 October 2013 be agreed and signed as an accurate record.

5. MINUTES OF SUB COMMITTEE MEETINGS

Members stated that Sarah Farooqi was in attendance at the Sub Committee and asked for this to be amended. Upon this amendment it was resolved that the minutes of the sub-committee meeting held on 3 October 2013 be agreed and signed as an accurate record.

6. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

7. APPROVAL OF EXEMPT MINUTES OF MEETING HELD ON 4 OCTOBER 2013

Resolved that the exempt minutes of the meeting held on 4 October 2013 be agreed and signed as an accurate record.

8. SITE VISIT (2PM ON THE HIGH STREET OUTSIDE THOMAS COOK)

9. STREET TRADING APPLICATION

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda. An application had been received from Mr Raviv Hadad for a street trading consent to sell deli items such as breads, traditional pastries, falafel mix, harissa dressing, aubergine dip, tahini sauce and other traditional cooked salad from a mobile trike at two locations. It was proposed that the trike would be located on the High Street outside Monsoon and Warehouse, location one, for the majority of the year. During the Christmas period this location had historically been occupied by a hot food unit operated by Mrs Ellen Danter and a licence had already been granted for this to continue in 2013. As such, it was proposed that the mobile trike would be located on the High Street outside Thomas Cook, location two, during the Christmas period only. If Members were minded to grant a licence to Mr Hadad, this would only be valid until 31 March 2014 as all street trading consents must be reapplied for annually on 1 April.

In response to a query, Amelia Byres confirmed that Mrs Danter had been granted a licence which allowed her hot food unit to be situated outside Monsoon and Warehouse until 31 December 2013. The van would be open to trade between the hours of 09:00 and 18:00 with the exception of Thursdays when this was extended to 21.00 hours to coincide with late night shopping.

Mr Hadad attended the meeting and spoke in support of his application. He explained that, when he had started thinking about the venture two years earlier, he had tried to consider it from a licencing point of view and had been as accommodating as possible. He had been in discussions with the licensing department about the location of the trike and he believed that it was acceptable in terms of the regulations for emergency vehicle access routes etc. As a small operator he did not have the resources to launch a big marketing campaign and he relied heavily upon footfall and exposure which he felt would be optimum at the proposed locations. His trike was attractive, clean and non-polluting and he felt that he would be able to offer something innovative which was suitable for all.

Members were invited to ask questions of the applicant, during which the following points were raised:

- A Member queried how the food would be kept hot and Mr Hadad confirmed that hot food would be cooked to order using a gas heater. He would not be using a generator. The size of the cooking area was minimal and, although he used a fryer, he provided assurance that smells would only arise if the oil being used was old or rancid. The smells would be no worse than those produced by a café, particularly as the cooking would be done in the open air.
- A Member questioned how Mr Hadad intended to keep the trike clean and tidy to comply with health and safety regulations. Mr Hadad indicated that he had a 60 litre foldable bin which would stand next to the trike. The trike had been carefully designed with a tap underneath which would allow the cooking oil to be emptied and replaced at the end of each day. There were no hand washing facilities on the trike as there was no water, however, he had a chemical towel and single use gloves. Mr Hadad referred to the fact that he would be subject to a health and safety assessment by Cotswold District Council and the Senior Licensing Officer confirmed that any premises carrying out food operations, including mobile or temporary premises, had to be registered with the local authority where the food would be stored and, if it was a mobile premises, where this would be located overnight. As Mr Hadad lived within Cotswold District, he would need to apply to Cotswold District Council for food registration.
- A Member noted that concern had been raised by objectors that the umbrella over the trike would reduce visibility of the shop fronts and he questioned whether Mr Hadad would consider decreasing the size of the umbrella to minimise this impact. Mr Hadad indicated that he had thought carefully about this and he had submitted photographs to illustrate its size. The umbrella needed to be a certain size to ensure that it complied with regulations in respect of cooking with oil.
- In response to a query regarding how the trike would be stocked, Mr Hadad explained that he would load his trike at the beginning of each day with as much stock as he could comfortably cycle with. Deliveries would take place between 8:00 and 10:00 hours so he intended to start trading from 11:00 hours each day.
- A Member questioned whether Mr Hadad had used the trike in other locations and he confirmed that he had taken it to several charity events and farmers' markets.
- In response to a comment that the trike might lose its appeal if it operated 365 days per year, Mr Hadad expressed the view that the trike was simply a tool which allowed him to sell his produce to a wide range of people. He did not feel that the food would lose its appeal if people liked it and he hoped that he would attract repeat customers who would expect the trike

to be in the same location, as with any other restaurant or supermarket.

- Several Members raised concern regarding the location of the trike. In response to a query as to why he had applied for two separate locations, Mr Hadad explained that he had opted for the location outside Monsoon and Warehouse mainly because of the higher footfall. Whilst he was happy with the second location outside Thomas Cook, he felt that he would attract more customers at the first location, given that a van selling hot food had successfully traded there for 12 years during the Christmas period. A Member raised concern that the second location was a very busy corner for both pedestrians and traffic as it was directly opposite the Regent Arcade and he did not feel that it was an appropriate location for the trike. A Member was of the view that the proposal would bring something new and exciting to Cheltenham which would enhance the streetscene, however, he did not feel that location one was acceptable given the close proximity to Monsoon and Warehouse which both sold clothing.
- In response to a query regarding the photographs of the trike outside Monsoon, which had been circulated separately as part of the supporting evidence, the Senior Licensing Officer explained that these were for illustrative purposes and did not show the trike in the exact place where it would be located should the licence be granted; in the photographs the trike was positioned directly in the emergency vehicle route. Mr Hadad agreed that the location of the trike was not completely accurate in the photographs.

John Forward, Regent Arcade Manager, had attended the meeting to speak in relation to his representation against the application. He explained that Canada Life, which owned the Regent Arcade, had spent a considerable amount of time and money developing the Arcade; this had included seeking planning consent which had come with very detailed conditions in relation to design and the materials which should be used. He believed that the conditions had been successfully adhered to and that the new design would add a lot of value to Cheltenham. He explained that there were six food outlets within the Regent Arcade, three of which were 'fast food' offerings which were similar to that proposed by Mr Hadad. It was very difficult for retail businesses to survive in the current economic climate and they all relied heavily on footfall. Whilst he was supportive of fair competition on a level playing field, he did not feel that a street trader should be allowed to open up in direct competition to businesses which were paying significantly higher business rates for units within the Regent Arcade. He questioned whether Mr Hadad would be trading when it was cold and wet as all his retailers had to do. Street trading had a major impact on other retailers and he felt that, granting a

licence to Mr Hadad to trade in that location would give him an unfair advantage.

In response, Mr Hadad indicated that there were advantages and disadvantages to every business. If the Committee granted him a licence he would pay his fees and he intended to trade in all weathers. The photographs he had provided showed that his trike was not very large and he did not think that it would be in competition with the other food offerings in the area and that it would help to generate more interest in the town which would benefit everyone. Street food was becoming increasingly popular in cities such as Copenhagen, Stockholm and London and he felt that there was no reason why it would not be a success in Cheltenham. Mr Hadad also pointed out that traders paid high rates for a location in the Regent Arcade and not all of that money went to the Council in the form of business rates. He had considered moving into an empty unit when he had closed his restaurant two years earlier, however, this was not financially viable for him. He went on to reiterate that he had carefully chosen the proposed locations for his trike.

In response to a Member query as to the fees paid by street traders, the Senior Licensing Officer confirmed that this varied depending on the number of days the licence had been granted for, however, they would be in the region of £4,000-5,000 based on an application to trade for 365 days per year. She explained that she did not know how much the retail units paid in terms of business rates..

A Member indicated that he could not support Mr Hadad's proposal in this location and that he was not comfortable with him trading for 365 days per year. Whilst it was an innovative idea, he did not feel that it would enhance the Town Centre. Mr Hadad understood these concerns but he asked that the Committee give him a chance as he believed that the business would work well. If a licence was granted by the Committee, it would only be valid until 31 March 2014, at which point there would be an opportunity to review its success.

Members adjourned from the Chamber to consider their decision.

Members returned to the Chamber and, upon a vote it was (3 against)

RESOLVED that Mr Hadad's Street Trading application be approved at one location only, on the High Street outside Thomas Cook, until 31 March 2014 as Members were satisfied that the trike would positively enhance Cheltenham as a tourist and retail destination and would not have a negative impact on the conservation area. Members requested that any new application be brought to the Licensing Committee for determination even if no objections were received.

10. PRIVATE HIRE DRIVER REVIEW

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda. Mr Stephen Owens held a private hire driver's licence which was due for renewal on 1 December 2015. Mr Owens had been subject to a vehicle inspection on 15 October 2013 by the enforcement officers from the Integrated Transport Unit, Gloucestershire County Council which oversaw all school transport providers across Gloucestershire. On inspection, the Integrated Transport Unit had found that the near side front tyre was worn below the legal limit on the outer edge, exposing the chord. The Transport Engineering Manager had contacted the Licensing Office and the Senior Licensing Officer had immediately suspended the vehicle and telephoned Mr Owens to advise him of this. Mr Owens had replaced the tyre and had brought it back to the Licensing Office for inspection. At the time of the incident, the Integrated Transport Unit had advised that this was the second time that Mr Owen had been found driving with a bald tyre, however, the first occasion had been much less serious and the County Council had chosen not to inform the Borough Council on that basis. The Committee was reminded that it must be satisfied that Mr Owens was a fit and proper person to continue to hold a private hire driver's licence.

A Member raised concern that this was the second time that Mr Owens had been found with a bald tyre and he sought clarification as to why the first incident had not been reported. The Senior Licensing Officer explained that the County Council had chosen not to inform the Borough Council on the basis that it was a minor issue. There was very little action which could be taken by the Borough Council if they were not advised of such incidents. The Member was of the view that the first incident should not be taken into account in the review of the licence given that the County Council had not considered it significant enough to report in the first place. Another Member disagreed with this opinion and indicated that the Police, County Council and Borough Council regularly used their discretion regarding the seriousness of offences and it was down to the Committee to decide what weight it would give to this information when determining what action should be taken.

In response to a Member query as to whether the Committee was able to require Mr Owens to attend a driver assessment course, the Senior Licensing Officer explained that, whilst the Committee did have the option of requiring Mr Owens to attend a driver assessment course, this was focused on driving and did not cover vehicle maintenance. In 2010, the Council's Policy had introduced an NVQ which all drivers had to complete within the first year of becoming a licensed driver, however, there was no given course which included vehicle maintenance before a licence was granted. Members agreed that the introduction of a course covering vehicle maintenance for new applicants should be considered as part of the Policy review in 2014.

Mr Owens explained that he normally bought quality tyres every few months, however, on this occasion he purchased part-worn tyres as a temporary measure until he got paid. Unfortunately the tyres had not been very good and he had been surprised at how quickly they had worn out. He indicated that he had been a taxi driver for 8 years and he had never done anything wrong before, he had a clean driving licence and he had never appeared before the Licensing Committee. He was very sorry and he would not let this situation happen again.

Members were invited to ask questions of Mr Owens, during which the following points were raised:

- When asked, Mr Owens confirmed that the part-worn tyres had only been fitted three weeks prior to the inspection by the Integrated Transport Unit. He had bought the tyres from Get Grip Tyres in Cheltenham and, although they had looked fine when they had been fitted, they had obviously been very poor quality. A Member raised concern that a similar incident involving another driver had come before the Committee within the last three months and he felt that it was necessary to ask Trading Standards to investigate the company, if the same one had been used on both occasions.
- A Member suggested that there may have been a problem with the vehicle tracking, based on the photographs which had been provided with the papers, and he questioned whether this had been checked. Mr Owens confirmed that this had been done when the new tyres had been fitted and, although it had been slightly out, it was not enough to have caused the tyres to have worn so significantly in such a short space of time.
- Several Members expressed their disappointment that Mr Owens did not carry out a daily check on his vehicle and there was particular concern that he had chosen to use sub-standard tyres given that he was transporting children. A Member questioned what action he had taken to ensure that his vehicle was roadworthy at all times and that passenger safety was not comprised. Mr Owens explained that he now checks his tyres on a weekly basis and he confirmed that he has an arrangement in place with his operator who has agreed to bear the cost of any repairs to his vehicle so that he can get any problems resolved immediately.

In summing up, Mr Owens explained that he had been fined £200 by the County Council and had also had to reimburse his operator for the cost of the new tyres so this had been a costly lesson for him. He expressed his remorse and indicated that he had learnt from his mistakes.

Members had the following recommendations to vote on:

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

Upon a vote it was (6 for, 2 against and 2 abstentions)

RESOLVED that the private hire driver's licence be continued with no further action because the Committee is satisfied that Mr Owens is a fit and proper person to hold such a licence.

11. OBJECT ON THE HIGHWAY

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. Mr Martin Canning based at Antique and Modern Fireplaces, 41-43 Great Norwood Street, Cheltenham had made an application to place a straight-sided and straight-bottomed 'A' board at the junction of Great Norwood Street and Suffolk Road. The 'A' board had previously been granted consent, however, the applicant had failed to renew this consent and a new application had been submitted as a result. Members were advised to bear in mind that the current Policy on Measures to Control Street Scene Activities in Cheltenham covering Street Trading, Objects on the Highway and Charitable Collections had been approved on 1 April 2013. The 'A' board had previously been granted consent under the old Policy. The new application does not comply with the current adopted Policy in a number of ways: the premises has shop-front at street level; the premises is not situated along a side alleyway and/or on private land which was not a public thoroughfare/right of way; the application is for a directional 'A' board more than 120 metres away from the premises which is contrary to condition (d) of the standard conditions attached to 'A' boards; and there was less than 1.8 metres of footway along the line of the board between the edge of the object and either the kerb or other highway boundary. She reiterated that the 'A' board had previously been licensed, however, due to an error on the applicant's part, it had not been renewed in time and therefore it had been brought to the Committee to determine whether the application should be granted in the conservation area where the premises was located.

A Member queried whether any similar applications had been received from other traders in the area during the time the 'A' board had been licenced. The Senior Licensing Officer advised that no other applications had been received and no other 'A' boards located along Great Norwood Street had been granted consent. A Member questioned whether the

pavement where the 'A' board had been located was wider than usual and confirmation was provided that this was the case. In response to a query as to whether any complaints had been made in relation to the 'A' board during the three years since it had last been granted a licence, the Senior Licensing Officer confirmed that there had been no complaints, however, there had been a number of objections from responsible authorities to the current application, as set out in the report circulated with the agenda. She confirmed that her records dated back to 2009 at which time Mr Canning had gone through the same application process and consent had been granted by the Licensing Committee.

Mr Canning explained that the 'A' board had been in the same location since 1962 and all of the businesses which had previously used the premises had found that it was vital for their trade due to the shop being located 200 yards off the main highway. When the 'A' board had been stolen in the past, trade had fallen to an unsustainable level. When the licence had last been considered, the Committee had made an exception and had granted consent for the 'A' board. He indicated that there had been no objections to the original application in 2009 and failure to renew the licence in time had been a complete oversight on his part. When his mistake had come to light, he had immediately telephoned the Senior Licensing Officer to apologise and had completed the relevant form. He could guarantee that, if the application was refused, the shop would be forced to close within 12 months.

Members were invited to ask questions of Mr Canning, during which the following points were raised:

- A Member questioned why the 'A' board was so important to a fireplace business as this was not the sort of shop which people would come across and make an impulse purchase. Mr Canning explained that Cheltenham was a big tourist town and the business did attract a lot of passing trade. Without the 'A' board, people would not necessarily see the shop. He reiterated that, when he had taken over the premises 13 years ago, he had been advised by the previous owners that the 'A' board had been vital to their trade and when the sign had been stolen there had been a negative impact on the business.
- A Member queried whether the 'A' board could be moved further down the road, closer to Mr Canning's shop. He indicated that the 'A' board had historically been located at the junction to Great Norwood Street and Suffolk Road where the pavement was wider so it did not obstruct the highway. Originally the sign had been fastened to a lamppost but he had moved it in response to a request from an officer when the licence had originally been granted.

- A Member raised concern that, if the 'A' board was granted consent, other surrounding businesses might also submit applications for similar signs given the importance which Mr Canning attributed to his sign in terms of generating trade. Whilst he accepted that this was a possibility, Mr Canning explained that traditionally this had not happened and the other businesses were not located 200 yards from the main footfall. When the 'A' board had originally been granted consent it had been made very clear that this was an exceptional circumstance.
- In response to a query as to where the business was advertised, Mr Canning indicated that he advertised in the Yellow Pages and was currently in the process of getting a website built.

In summing up, Mr Canning explained that he was a local man and his business employed one full-time and three part-time members of staff, with all restoration work carried out by local craftsmen. If the 'A' board was not granted consent this would severely restrict trade and would lead to the business closing down. The application had previously been granted consent and he appealed to Members to pass the application before them.

Members had the following recommendations to vote on:

1. that the application be approved because Members are satisfied that the 'A' board complies with the new policy in respect of objects placed on the highway; or
2. that the application be refused because it does not comply with the new policy in respect of objects on the highway

A Member proposed an amendment to recommendation 1 as follows: 'that the application be approved as an exception to the new policy in respect of objects placed on the highway on the grounds of custom and practice'.

Upon a vote it was (5 for and 4 against)

RESOLVED that the application be refused because it does not comply with the new policy in respect of objects placed on the highway.

12. HACKNEY CARRIAGE DRIVER APPLICATION

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received from Mr Giuseppe Maurizio Licata for a hackney carriage driver's licence. Members were advised that Mr Licata had previously been a licensed hackney carriage driver with Cheltenham Borough Council until 2009 when he had

received a drink-driving conviction and had surrendered his hackney carriage badge. Mr Licata had returned with a new application in 2011 at which time he had six points on his Driver and Vehicle Licensing Agency (DVLA) driver's licence for using a mobile phone whilst driving and speeding on the motorway. The application had been referred to the Licensing Committee which had subsequently been refused. The Council's Policy on the Relevance of Convictions sets out that, where a disqualification has occurred as a result of a drink-driving offence, at least five years free from conviction from the date of the restoration of the DVLA licence should normally elapse before an applicant is considered for a licence, however, at that time the Licensing Committee had suggested that Mr Licata submit another application in two years. Rather than waiting for that period to elapse, Mr Licata had submitted another application in March 2012 which had also been refused by the Licensing Committee. Two years had now passed since the Licensing Committee in 2011 and Mr Licata had submitted a new application, however, it was noted that, since his last application, Mr Licata had received a caution for possessing a controlled Class B drug. The Council's policy in respect of drink-driving convictions continued to set out that at least five years should normally elapse before an applicant was considered for a licence, despite the Committee's suggestion in 2011 that Mr Licata reapply in two years. In addition, the policy set out that an application from an applicant with an isolated conviction for an offence related to the possession of drugs within the last three years would require careful consideration of the facts. Members were required to determine whether, based on all the information, Mr Licata was a fit and proper person to hold a hackney carriage driver's licence.

Mr Licata had attended the meeting and spoke in support of his application. He explained that he had some old school friends visiting him during race week in 2012 and they had asked him to get hold of the drugs. On 15 March 2012, Gold Cup day, he had been walking home at around midnight when he had been stopped by police for a spot check and found with the drugs. In relation to his drink-driving conviction, Mr Licata advised that he had now been driving for a year in the UK and 8 months in Dubai without any points on his licence. He wanted an opportunity to get his life back on track and was ready to get back to work and earn a living.

Members were invited to ask questions of Mr Licata, during which the following points were raised:

- A Member sought clarification as to whether Mr Licata had bought the drugs for use by his friends and Mr Licata confirmed that they had asked him to get the drugs for them to take at the races. It was a special occasion and they wanted to have a good time on what was the most popular day in the Cheltenham calendar.

- A Member questioned whether Mr Licata continued to use drugs recreationally. Mr Licata explained that he was an ex-professional footballer who had played for Cheltenham Town Football Club many times; he was not a drug user or a drug dealer. The incident had occurred when he had been going through a very bad divorce when he had lost everything and had been unable to see his son. This phase was now over and he was ready to get back to work.

Members had the following recommendations to vote on:

1. that the application be granted as Mr Licata is a fit and proper person to hold a hackney carriage driver's licence; or
2. that the application be refused on the grounds that Mr Licata is deemed not to be a fit and proper person to hold a hackney carriage driver's licence.

Upon a vote it was (8 for and 1 against)

RESOLVED that Mr Licata's application be refused on the grounds that he was deemed not to be a fit and proper person to hold a hackney carriage driver's licence.

Councillor Walklett left the meeting at 4:44pm

13. ALLOCATION OF CHRISTMAS STREET COLLECTION DATES

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. Appendix A to the report set out a schedule of street collection applications for the town centre for the months of November and December. Paragraph 4.1 detailed which charities had made the street collection applications. Some charities had requested more dates than allocated, however, the Licensing department had discussed directly with the charities the dates which had been allocated to them and they were all happy with the arrangements.

A Member noted that the Lion's Club of Cheltenham had been allocated 2.5 days and she indicated that she would have liked to have seen this cut down if another application had been received from a different charity. The Senior Licensing Officer indicated that Members were entitled to reduce the number of days if they felt that it was too much.

Upon a vote it was (unanimously)

RESOLVED that the proposed allocation of street collection dates attached at Appendix A be approved.

14. **ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT
AND WHICH REQUIRES A DECISION**
None
15. **DATE OF NEXT MEETING**
6 December 2013

Garth Barnes
Chairman