



CHEL TENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 3 October 2014
2.00 pm

Council Chamber - Municipal Offices

Membership	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Garth Barnes, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton and Jon Walklett

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.		MINUTES OF MEETING HELD ON 5 SEPTEMBER 2014	(Pages 1 - 12)
5.		REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE Mr Kirit Jaientilal – HCD805	(Pages 13 - 20)
6.		REVIEW OF PRIVATE HIRE DRIVER'S LICENCE Mr Rowshan Ghanbary – PHD092	(Pages 21 - 24)
7.		REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE Mr Benit Harish Santilal – HCD821	(Pages 25 - 28)
8.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
9.		DATE OF NEXT MEETING 07 November 2014	

Contact Officer: Annette Wight, Democracy Assistant, 01242 264130
Email: democratic.services@cheltenham.gov.uk

Licensing Committee

**Friday, 5th September, 2014
2.00 - 3.55 pm**

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Garth Barnes, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton and Jon Walklett
Also in attendance:	Vikki Fennell and Andy Fox

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

There were no public questions.

4. MINUTES OF MEETING HELD ON

The minutes of the Licensing Committee held on 1 August 2014 were approved and signed as a true record.

5. MINUTES OF SUB COMMITTEE MEETINGS

The minutes of the Licensing Sub Committee meetings held on 23 July 2014 and 6 August 2014 were approved and signed as a correct record.

6. APPLICATION FOR A STREET TRADING CONSENT

The Senior Licensing Officer, Andy Fox, introduced the report which had been circulated to Members. He advised that an application had been received from Mrs Marie Fullwood for a street trading consent. Mrs Fullwood was proposing to sell specialist coffees, chilled drinks, cakes and biscuits from a mobile unit measuring 2.5m x 2.1m (8ft x6.8ft) on the High Street (facing East) adjacent to French Connection and Burger King. Mrs Fullwood had applied to trade from Monday to Saturday 08:00 to 18:00 and Sunday 09:00 to 18:00, with extended hours (08:00 to 21:00) during late night shopping over Christmas.

The Officer referred members to point 5 in the report, outlining the objections received from:

- Howard Barber, Public Realm Designer, Cheltenham Borough Council
- Martin Quantock Cheltenham Business Partnership Manager
- Martin Levick, Senior Enforcement and Compliance Officer, Cheltenham Borough Council, and

- William Danter

All objections were along similar lines of direct competition with nearby businesses selling similar produce and not conducive to the character and appearance of the area.

Appendix A of the report provided an image of the trading stall. Appendices B and C of the report showed location maps of where trading would take place and other traders in the locality.

The officer referred members to the Council's current policy in relation to street trading and said that members must be satisfied that the proposed street trading is such that "it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape".

In reply to a question from a Member, the Officer said that Appendix C showed the other street traders in the vicinity, who were joined at varying times throughout the week and year by charity sellers and seasonal traders, such as the turkey man over the Christmas period.

The applicant Mrs Fullwood attended the meeting and spoke in support of her application. She said they were a small family catering business, wishing to keep everyone in the family employed and that they would like to sell specialist coffees.

In response to questions from Members, Mrs Fullwood said that:

- The coffee bean would be specifically for sale in Cheltenham and be of a type that was not too bitter.
- The illustration of the unit was only a proposal and that it could be made specially to conform to how the committee would like it to look and smaller in size to the proposed 6ft x 8ft if required.
- The family were in the catering business but were not currently trading elsewhere.

Members were advised that they had the following recommendations to determine:

1. The application be approved because Members are satisfied that the application does comply with the provision of the Street Scene policy and the location is deemed suitable; or
2. The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location is deemed unsuitable.

A vote on option 1 was LOST Voting (For 1, Against 7 with 2 abstentions)

A vote on option 2 was CARRIED Voting (For 7, Against 0 with 3 abstentions) and therefore it was

RESOLVED that the application be refused because it does not comply with the provision of the street scene as the proposed location is deemed unsuitable.

Mrs Fullwood asked the Chairman if the refusal was completely due to its location, to which he replied that it was certainly an important part of the reason, but that street trading applications must add to or enhance the tourist, leisure or residential enjoyment of the town and be in keeping with the present street scene.

7. APPLICATION FOR A HACKNEY CARRIAGE VEHICLE LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report which had been circulated to Members. He advised that an application had been received from Mr Aditya Rai for a Hackney Carriage vehicle licence on 14 August 2014 to license a Peugeot E7 registration SC57 UJF. Mr Rai had failed to renew his vehicle licence on time and was now making a new application, however the vehicle in question was older than the maximum permitted age limit of 5 years from date of manufacture and thus members were being asked to determine whether the application be permitted.

The Officer added that Mr Rai's previous licence had expired on 8 August 2014 and that despite numerous reminders he had failed to renew it in time. The Licensing and Business Support Team leader having considered the facts, notified Mr Rai in writing on 8 August that he had decided not to renew his expired licence. A copy of this letter was attached at Appendix A.

The Officer reminded members that this application must be determined on its merits as a new licence application and advised that the vehicle had passed all relevant assessments and was a disabled access vehicle.

In response to questions from members the Officer confirmed that :

- It was the same vehicle seeking a new licence
- The vehicle was 7 years old and that as it was a disabled access vehicle, it could continue working for 14 years.
- The vehicle had been purpose built as a disabled access taxi and specifically modified with sliding doors and built in ramps.
- Mr Rai's licence expired on 8 August and that the letter refusing Mr Rai's renewal was dated 8 August, confirming that the renewal was a day late. Mr Rai's application of 14 August was for a new licence.

The applicant Mr Rai attended the meeting and spoke in support of his case for a licence renewal. Mr Rai told members that he had tried to renew his licence on 4 August but that his car was due for an MOT on 6 August which it subsequently failed and thus he thought he could not reapply for his licence without a valid MOT. As the Depot was busy the car could not be fixed straightaway so it was left there for the work to be done and it passed its MOT on 8 August. Mr Rai rang the council on 8 August to renew his licence, but was told it had expired.

Members felt that the Officer's stance had been unreasonable as it was only one day late, however the Officer pointed out that allowances were made for MOTs if they had been contacted and relevant forms stamped.

Councillor Thornton moved to vote, but questioned the resolution at 1.4.1, stating that the renewal should be granted. The Solicitor advised the committee

that it should vote on the recommendations as set out in the report.

Members were advised that they had the following recommendations to determine:

1. The application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy; or
2. The application be refused because the vehicle does not comply with the Council's adopted policy.

Upon a vote it was unanimously

RESOLVED that the application be granted because the Committee considered there to be sufficient grounds to deviate from the adopted policy.

The Chair made the comment that Officers should think carefully about how they use their discretion with situations of renewal one day after expiry, especially when the vehicle was overnight in the council depot. A Member considered it was disgraceful that Mr Rai had been deprived of his income for a month, for the sake of one day.

8. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report concerning the review of Mr Lance Stuart Hepworth's Hackney Carriage Driver's Licence which was due for renewal on 19 January 2015. He advised members that Mr Hepworth's licence was suspended on 14 August 2014 as Mr Hepworth had pleaded guilty on 11 August 2014 to the death of Katie Clutterbuck on 15 September 2013 by careless / inconsiderate driving.

The Officer referred members to point 1.5 of the report stating that the Licensing Committee has the delegated authority to revoke a driver's licence. He also informed members that since writing the report Mr Hepworth had been sentenced to 7 months in prison and disqualified from driving for 3 years.

On points of clarification, the Officer confirmed that:

- In 3 year's time Mr Hepworth would be able to re-apply for a new licence.
- Mr Hepworth could not attend to speak for himself as he was in prison and thus the decision should be made at this meeting.
- The committee were being asked to revoke his licence with immediate effect, despite the fact that he had now been disqualified from driving.

Members felt this was merely a matter of formality and the Chair moved to vote.

Members were advised that they had the following recommendations to determine.

1. Mr Hepworth's Hackney Carriage driver's licence be continued with no further action because the Committee is satisfied that he is a fit and

proper person to hold such a licence; or

2. Mr Hepworth's Hackney Carriage driver's licence be revoked as the Committee considers him to no longer be a fit and proper person to hold such a licence in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976. and
3. Subject to the resolutions above, the Committee must also determine whether Mr Hepworth's Hackney Carriage driver's licence should be revoked with immediate effect in the interests of public safety in accordance with section 2B of the Local Government (Miscellaneous Provisions) Act 1976.

Upon a vote it was (9 for, 1 against)

RESOLVED, that Mr Hepworth's Hackney Carriage driver's licence be revoked as the Committee considered him to no longer be a fit and proper person to hold such a licence in accordance with section 61(1)(b) of the Local Government (Miscellaneous Provisions) Act 1976 and that it be revoked with immediate effect in the interests of public safety in accordance with section 2B of the Local Government (Miscellaneous Provisions) Act 1976.

9. SEXUAL ENTERTAINMENT VENUES IN CHELTENHAM

The Senior Licensing Officer, Andy Fox Officer introduced the report which summarised the results of the public consultation on whether Cheltenham Borough Council should limit the number of Sexual Entertainment Venues ("SEV") it will license in the borough. Under the Council's constitutional arrangements, the Licensing Committee acted as consultee to Cabinet/Lead Member on recommendations/responses for the adoption and review of the licensing policy. The Committee therefore needed to consider the relevant facts and put forward a view for consideration by Cabinet.

The officer circulated a paper of the results of SEV consultations with other Council's, as well as the Chair's proposed framework for forming a resolution and Members were given time to read these.

He reminded Members that premises could provide relevant entertainment on an infrequent basis via a Temporary Event Notice (TEN) without the need for a SEV licence, this being for no longer than 24 hours on no more than 11 occasions a year, but that this report was concerned with the regulation of frequent sexual entertainment.

The Solicitor advised Members that the Council were not legally required to adopt such a policy but that it would be considered good practice to do so. She added that the current policy, adopted on 4 February 2011, did not set a limit on the number of SEVs, but dealt with each application on a case by case basis. However following the recent grant of a SEV licence that attracted significant local opposition, the Council had considered it appropriate to undertake consultation on whether to limit the number of licensed SEVs in the borough. She advised that the Council was empowered to set a limit on the number of

licensed SEVs permitted in the relevant locality, with zero being an option, but that the relevant locality must be defined. The whole of Cheltenham Borough cannot be defined as the relevant locality ruling out a total zero limit.

Appendix A gave a summary breakdown of the 174 responses received from the public consultation on the views of the town's residents.

Members were also reminded that a petition had been submitted to the Council meeting on 21 July calling for it to adopt a zero limit and that it was resolved to refer the matter to Cabinet for consideration. Members were also referred to point 4.8 in the report from the Gloucestershire Constabulary who said there were no statistics suggesting that SEVs were responsible for or increased the likelihood of sexual offences.

The Chair reminded Members that the sexual entertainment policy varied from the alcohol licensing policy in that there is no "presumption of grant". Whilst acknowledging that all members have various moral views, they should consider the best interests of the borough as a whole; also a borough wide zero limit would not be in the spirit of the act. He reminded that the committee were not acting today as regulatory body but as an advisory body to Cabinet.

Councillor McKinlay attended the meeting as Cabinet Member for Development and Safety in order to take the views of this committee to the next Cabinet meeting on 16 September. Cllr McKinlay gave his views saying that a blanket ban was not a possibility but that he would recommend restricting potential SEVs to the town centre and not a particular ward. He considered the core commercial area to represent the town centre and would favour no SEVs in residential areas, with each application in the town centre area being taken to Licensing Committee and assessed on its individual merit.

The Chair asked Members if they had all seen the maps that had been circulated defining the core commercial and town centre cleansing areas of the town and the ward boundaries. He pointed out that the cleansing area of the town equated to the area of the night time economy and that the town centre would also need to be defined. The chair introduced his suggested framework for forming a resolution which had been circulated at the start of the meeting and suggested the following options:

1. No change. Applications for SEVs within the town should continue to be assessed on their individual merits without numerical or geographical limit.
2. A limit of (say) zero applies to the number of SEVs outside the town centre, however applications for SEVs within the town centre should continue to be assessed on their individual merits without numerical limit.
3. A limit of (say) zero applies to the number of SEVs outside the town centre, however applications for SEVs inside the town centre should be regulated in accordance with(e.g. resolution 4 below)
4. Applications for SEVs would not normally be permitted within a geographical distance (e.g. 90m is in use in another authority) of, for example, premises or areas frequented by children, young persons or families, schools, parks, libraries, swimming pools, markets, churches,

mosques and certain shops mainly used by families or children, or a residential area.

5. Any other definition which Members may propose.

In reply to questions from Members about the SEV consultation with other councils, the Officer responded as follows:

- Approximately 15 other councils of varying sizes had been approached, some because they were of a similar size to Cheltenham or had a university and some on the personal knowledge of the officers.
- Due to work load, the consultation had only started two weeks previously and thus not all councils had had time to reply.

The Chair concluded that the results obtained gave a good snapshot with a range of responses, showing some had a zero limit and some had a geographical limit.

Some members were concerned about the validity of the public consultation survey saying that 174 responses from a Borough of 20 wards and a population of 114,000 was a poor representative sample that didn't reflect the town as a whole and probably also depended on their experience of the night time economy.

The chair felt 174 was a high number for a licensing consultation and the Officer reported that the consultation had been advertised on the council's website for 12 weeks, with a press release and posters in council buildings as well.

Councillor Regan referred to the figures in the survey of 98% and 99% per ward who wanted a zero limit on the number of permitted SEVs in each ward. She said Cheltenham was a cultural town and the survey showed the strong views of the electorate. She concurred that the Borough as a whole could not have a zero limit, but wanted the relevant locality to be by ward and moved to set a zero limit in every ward. This was seconded by Cllr Barnes.

Councillor Barnes, as a ward member of College Ward where the current SEV was situated, highlighted that a large proportion of the signatures on the recent petition calling for a zero limit came from his ward. He added that if a zero policy outside the town centre was applied, the core commercial centre would include parts of several wards and in particular parts of College ward where the majority of people against SEVs live. The residents did not want a permanent SEV club in one area, but were not against the TENs that clubs can use.

Another Member also felt that the survey was not a reflective view of the town and supported the Cabinet Member's proposal, with a no to a blanket ban, and looking at each application on an individual basis. Cheltenham had one club so far and that there had not been any problems – no increase in violence or rape and no problems with the police. He felt the market should dictate commercial business.

Another Member highlighted that the sex shop in Kingsditch which the committee had approved some 12 years ago, had not resulted in anything

untoward going on and that the Blue Room, a former SEV, which was closer to residential areas, had closed after 3 or 4 years and had not caused any problems. He said incidents could still happen during race week and the other 11 occasions in the year permitted under a TEN. He suggested that there appeared to be lot of opposition as those who opposed things were generally more vocal than those who approved. He was not in total favour but felt each case should be judged on its merits. He also asked if there were any figures for sexual assaults in the last two years in the town, but the officer replied that he didn't have these figures.

In reply to a question from a Member, the Officer informed Members that there was more control if premises were licensed than under a TEN.

A member suggested that a zero limit would not stop any activity of this nature and there could be more risk if premises were not licensed.

Councillor Regan as the proposer of the amendment said that people who didn't respond to the consultation may not care about the town but she did and Members should not disregard the many people who signed the petition.

The chair invited Members to vote on the proposal from the Member that there should be a zero limit in every ward.

Upon a vote the motion was LOST
Voting (For 2, Against 7, Abstentions 1)

Councillor Chard proposed that the committee should recommend option 2 on the sheet circulated at the start of the meeting i.e. a zero limit outside the town centre and applications within the town centre considered on their individual merits. This was seconded by Councillor Thornton.

Speaking against the proposal, a Member was concerned that there should be some restrictions even in the town centre to avoid residential areas, churches etc. Another Member favoured a more clearly defined policy rather than assessing each case on its 'merits' and supported option 4 on the sheet. Members acknowledged the difficulty of defining a geographical limit.

The chair invited Members to indicate their support for an amended version, as in Option 3 with some restrictions as set out in 4.

Upon a vote this was LOST. Voting (For 4, Against 6)

The chair invited Members to continue to debate option 2 and in particular to agree a definition of the town centre. The two options seemed to be the core commercial area or the cleansing area and the former was substantially bigger and contained more residential areas.

Upon a vote it was (Voting For 8 with 2 abstentions),

Resolved that it be recommended to Cabinet that a zero limit applies to the number of SEVs outside the town centre, however applications for SEVs within the town centre should continue to be assessed on their

individual merits without numerical limit. The town centre to be defined as the Cleansing area of the town.

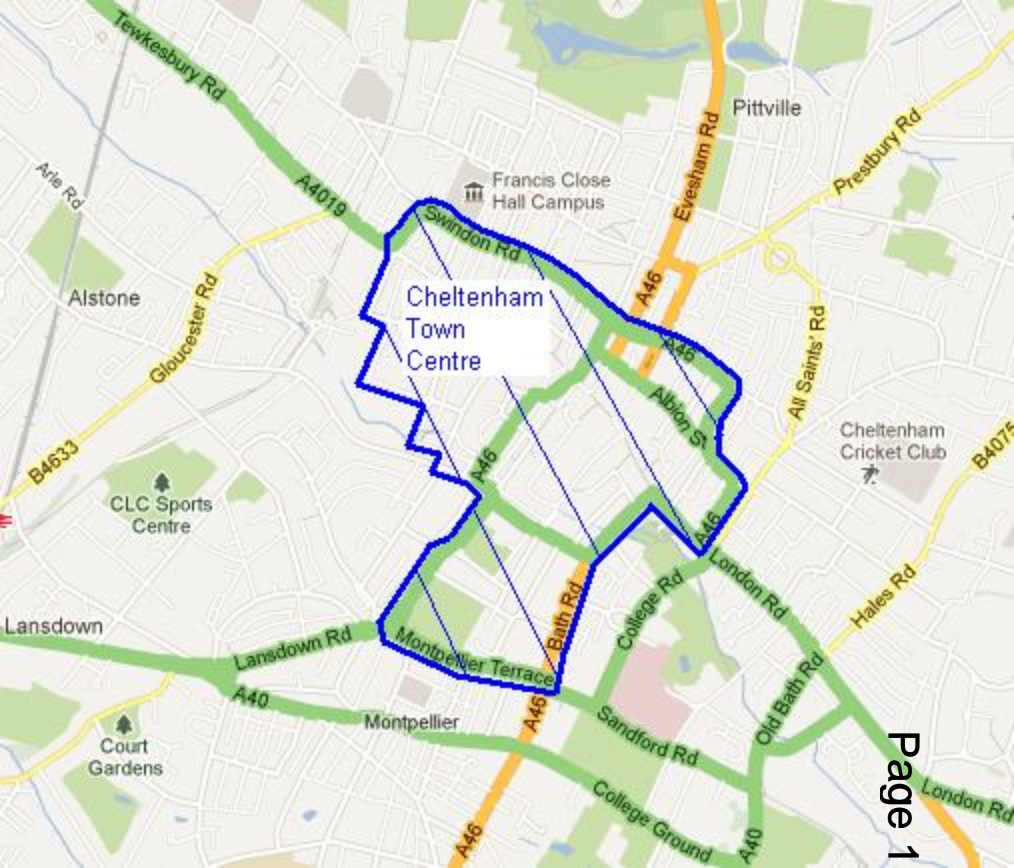
[Post meeting note: The cleansing area as on the map circulated to members, and with these minutes is correctly titled the Primary Cleansing Area]

- 10. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**
None

- 11. DATE OF NEXT MEETING**
3 October 2014.

Roger Whyborn
Chairman

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Licensing Committee – 3rd October 2014

Review of a Hackney Carriage Driver’s Licence

Mr Kirit Jaientilal – HCD805

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Kirit Jaientilal holds a Hackney Carriage driver’s licence HCD805 which is due for renewal on 28th February 2015.
- 1.2 Mr Jaientilal holds a Hackney Carriage vehicle licence (HCV072), which is a Toyota Avensis registration number VO11HZX.
- 1.3 Mr Jaientilal was subject to a vehicle inspection on 5th September 2014 by the Licensing officers and officers from Gloucestershire Constabulary. On inspection the Licensing officers found that the vehicle had 3 (Three) tyres worn below legal limit.
- 1.4 Photographs were taken at the time of the inspection, although these do not show the true extent due to the time and poor visibility and are attached at **Appendix A**. Also a copy of the inspection report from the evening at **Appendix B**.
- 1.5 In light of this the Licensing & Business Support Team Leader has taken the view that Members of Committee should be aware of the offences because of:
 - 1.6 The nature of the offence; and,
 - 1.7 The need to ensure that, Mr Jaientilal is judged to be a fit and proper person to hold a Hackney Carriage driver’s licence.
- 1.8 **The Committee is recommended to resolve that:**
 - 1.8.1 **Mr Jaientilal’s Hackney Carriage driver’s licence be continued with no further action because the Committee is satisfied that Mr Jaientilal is a fit and proper person to hold such a licence, or**
 - 1.8.2 **Mr Jaientilal’ Hackney Carriage driver’s licence be revoked as the Committee considers him not a fit and proper person to hold a Hackney Carriage driver’s licence because he failed to maintain his vehicle in a roadworthy condition.**

1.9 Implications

- 1.9.1 Financial **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

1.9.2 Legal

There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.

The Borough Council has the ability to suspend or revoke a Hackney Carriage driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Maintenance of Vehicle

3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.

3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers' and vehicle owners' responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.

3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make either individually or all of them. The use of these tyres must be supported by a method

statement (such as the manufacturer's handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS) must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

4. Licensing Comments

- 4.1 Mr Andy Fox - Senior Licensing Officer immediately suspended the vehicle, Mr Jaientilal expressed concern that he would now have to wait for his plate to be returned until Monday and would lose out on a weekend's work. Mr Jaientilal produced the vehicle for inspection at the Licensing Office on the Saturday morning after officers made themselves available.
- 4.2 It is worth noting that had Police Traffic officers been in attendance then this vehicle would have been impounded and resulted in Mr Jaientilal facing a court summons, where he would have been given a heavy fine and had penalty points added to his DVLA Licence. Unfortunately on this occasion we were not able to get the support of the Traffic Officers for this exercise.
- 4.3 The vehicle was inspected by Mr Andy Fox who confirmed that the vehicle had 3 new tyres fitted. Mr Jaientilal explained at the time of the incident to the Police Officer that he was worried that he thought one of the tyres was a bit low, before he went on holiday (about a month ago!).
- 4.4 When interviewed on 11 September 2014, Mr Jaientilal was asked how often he checked his vehicle, he replied "when necessary, about once a month". Andy Fox stated that as a 'Professional driver' this is not adequate or acceptable. He has apologised and explained that he has now bought himself a tyre gauge and will check his tyres regularly.
- 4.5 Mr Jaientilal has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.6 The Committee must be satisfied that Mr Jaientilal is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.
- 4.7 The maintenance of all licensed vehicles should be the priority for the vehicle proprietor as the transportation of the public is a position of trust.

Background Papers

None

Report Author

Contact officer: Mr Andy Fox
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775004

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White - Driver
Green - Owner
Pink - File

VEHICLE EXAMINATION REPORT

Date: 5/7/14 Time: 7.35 Place: offices

Vehicle	Make: Toyota	Reg No: VO11 HZD	Mileage: 65288
	Model: Aveniris -	HC/PH plate no: HCV 072	
Driver	Name: Kiril Samardžić	Badge no: H20805	
Proprietor/Owner	Name:	Address:	

Item inspected	Pass	Fail	Comments
Lighting equipment			
Front and rear lamps	///		
Headlamps	///		
Stop lamps	///		
Rear reflectors	///		
Direction/Hazard lamps	///		
Vehicle exterior			
Bodywork condition/colour	///		
Advertising	///		
Door, bonnet and boot lid	///		
Exhaust emissions	///		
Road wheels/Tyres	///		NSR BALD.
Condition of windscreen	///		NSF BntA fail
Screen wash & wipers	///		OSF B17007 fail
Front and rear number plates	///		
Taxi roof sign/Licence plates	///		
Exterior mirrors	///		
Vehicle cleanliness	///		

Item inspected	Pass	Fail	Comments
Vehicle interior			
Horn	///		
Handbrake	///		
Seat belts	///		
Interior mirror	///		
Window winders	///		
Seats/upholstery/mats	///		
Interior cleanliness	///		
Taximeter			
Make:	///		
Serial number:	///		
Seal	///		
Accuracy	///		
Other items			
Fire extinguishers	///		
Tariff card displayed	///		
First Aid kit	///		
No smoking signs	///		

Stop Notice Issued: YES/NO

Signature (Driver/Owner): Kiril Samardzic

Signature (Examining Officer): [Signature]

**LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976 - SECTIONS 58 & 68
SUSPENSION OF VEHICLE LICENCE**

STOP NOTICE

I am not satisfied as to the fitness of the above vehicle. The defects noted are:-

OSF/NSF/NSR TYRE BILD

In accordance with the above provisions, I hereby SUSPEND the vehicle licence in respect of this vehicle for further inspection on: 6/10/14

You are hereby given notice in accordance with Section 58(2) of the Act, that failure to return the vehicle licence plate may lead to your prosecution.

Driver's Signature: Kiril Samardzic

Authorized Officer: [Signature]

NOTE: This vehicle may not legally be used as a Hackney Carriage or Hire Car until defects are rectified, and the suspension of the licence rescinded.

STOP NOTICE REMOVED BY:

DATE:

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Licensing Committee – 3rd October 2014

Review of a Private Hire Driver’s Licence

Mr Rowshan Ghanbary – PHD092

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

1.1 Mr Rowshan Ghanbary holds a Private Hire driver’s licence PHD092 which is due for renewal on 15 March 2016.

1.2 Mr Ghanbary has convictions on his DVLA driving licence. The details of these are contained in the enclosed background papers.

1.3 In light of this the Licensing & Business Support Team Leader has taken the view that Members of Committee should be aware of the convictions because of:

1.3.1 The nature of the offence; and,

1.3.2 The need to ensure that Mr Ghanbary is judged to be a fit and proper person to hold a Private Hire driver’s licence.

1.4 The Committee is recommended to resolve that:

1.4.1 Mr Ghanbary’s Private Hire driver’s licence be continued with no further action, because the Committee is satisfied that Mr Ghanbary is a fit and proper person to hold such a licence; or

1.4.2 Mr Ghanbary’s Private Hire driver’s licence be revoked as the Committee considers Mr Ghanbary not to be a fit and proper person to hold a Private Hire driver’s licence.

1.5 Implications

1.5.1 Financial **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

1.5.2 Legal There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@tewkesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Borough Council must be satisfied that the holder of a Private Hire licence is a fit and proper person to hold that licence (Section 51 Local Government (Miscellaneous Provisions) Act 1976).

2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

- 2.3 The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern.

3.6 HYBRID TRAFFIC OFFENCES

- CU10 Using a vehicle with defective brakes
- CU20 Causing or likely to cause danger by reason of use of unsuitable vehicle or using a vehicle with parts or accessories (excluding brakes, steering or tyres) in a dangerous condition
- CU30 Using a vehicle with defective tyre(s)
- CU40 Using a vehicle with defective steering
- CU50 Causing or likely to cause danger by reason of load or passengers
- CU80 Breach of requirements as to control of the vehicle, mobile telephone etc
- SP10 Exceeding goods vehicle speed limit
- SP20 Exceeding speed limit for type of vehicle (excluding goods or passenger vehicles)
- SP30 Exceeding statutory speed limit on a public road
- SP40 Exceeding passenger vehicle speed limit
- SP50 Exceeding speed limit on a motorway

4. Licensing Comments

- 4.1 Mr Ghanbary has been a licensed Private Hire driver in Cheltenham since making his original application in March 2012.
- 4.2 Since the grant Mr Ghanbary's Private Hire driver's licence in March 2012, the Licensing Section have not received any complaints regarding Mr Ghanbary's driving ability.
- 4.3 Mr Ghanbary reported his first set of points from January in June of this year and then on the 1st September Mr Ghanbary came in to inform us of the other two sets of points he had received, at this point his licence was copied and placed on file.
- 4.4 On 9 September Mr Ghanbary was interviewed by Andy Fox and Sarah Hughes at this point we pointed out that one set of points was recorded by mistake on his DVLA licence as 28/3/2004. Officers asked if it was from 2004 and he replied it wasn't and was in fact 2014.
- 4.5 This mistake was verified by officers carrying out an online check.

- 4.6 If Members are minded to allow Mr Ghanbary's licence to continue, they have the option of adding a requirement that Mr Ghanbary must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision, and indeed Mr Ghanbary has offered to do this if required.
- 4.7 Mr Ghanbary has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer Members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.8 The Committee must be satisfied that Mr Ghanbary is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

Report Author

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Licensing Committee – 3rd October 2014

Review of a Hackney Carriage Driver's Licence

Mr Benit Harish Santilal – HCD821

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

1.1 Mr Benit Harish Santilal holds a Hackney Carriage driver's licence HCD821 which is due for renewal on 26 March 2015.

1.2 Mr Santilal has convictions on his DVLA driving licence. The details of these are contained in the enclosed background papers.

1.3 In light of this the Licensing & Business Support Team Leader has taken the view that Members of Committee should be aware of the convictions because of:

1.3.1 The nature of the offence; and,

1.3.2 The need to ensure that Mr Santilal is judged to be a fit and proper person to hold a Hackney Carriage driver's licence.

1.4 The Committee is recommended to resolve that:

1.4.1 **Mr Santilal's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that Mr Santilal is a fit and proper person to hold such a licence; or**

1.4.2 **Mr Santilal's Hackney Carriage driver's licence be revoked as the Committee considers Mr Santilal not to be a fit and proper person to hold a Hackney Carriage driver's licence.**

1.5 Implications

1.5.1 Financial **Contact officer: Sarah Didcote**
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1.5.2 Legal There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.

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2. Background

2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

- 2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.
- 2.3 The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.5 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern.

Major Traffic Offences

- 3.6 An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

4. Licensing Comments

- 4.1 Mr Santilal has been a licensed Hackney Carriage driver in Cheltenham since making his original application in March 2006.
- 4.2 Since the grant of Mr Santilal's Hackney Carriage driver's licence in March 2006, the Licensing Section have not received any complaints regarding Mr Santilal's driving ability.
- 4.3 Mr Santilal came in to the Council Offices and completed a Points Notification form where he declared an IN10 offence on the 8th July 2014 which is a major offence of driving without insurance.
- 4.4 Mr Santilal was interviewed by Andy Fox the Senior Licensing Officer. Mr Santilal explained that he had gone to London in his sisters car and that she was tired so he drove, he thought he was insured. The vehicle he was driving was not a licensed vehicle.
- 4.3 If Members are minded to allow Mr Santilal's licence to continue, they have the option of adding a requirement that Mr Santilal must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision.

- 4.4 Mr Santilal has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer Members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.5 The Committee must be satisfied that Mr Santilal is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Background Papers

Service Records

Report Author

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