



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 9 January 2015
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 December 2014	(Pages 1 - 6)
5.	APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE Mr MD Khairul Islam	(Pages 7 - 10)
6.	ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
7.	DATE OF NEXT MEETING 6 February 2015	

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Licensing Committee

Friday, 5th December, 2014

2.00 - 3.35 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 Phil Cooper

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 3 OCTOBER 2014

The minutes of the Licensing Committee held on 3 October 2014 were approved and signed as a true record.

5. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer, Phil Cooper, introduced the report concerning the application from Mr Giuseppe Maurizio Licata for a private hire driver's licence. He informed members that Mr Licata had convictions which were detailed in the background papers.

The Officer advised members that Mr Licata had been licensed as a Hackney Carriage Driver in Cheltenham until 2010 when he was convicted of an offence and surrendered his licence. Since then he had reapplied on 3 occasions for a licence, in 2011, 2012 and 2013, and on each occasion the application was refused by the Licensing Committee who decided Mr Licata was not a fit and proper person to hold such a licence.

Members were advised that Mr Licata had now reapplied and in the background papers were interview notes in which Mr Licata had explained why he felt his application should now be granted.

In response to questions from members, the Officer clarified that the offence happened on 16 November 2009, with the conviction being on 8 February 2010, when Mr Licata was disqualified from driving for 17 months, reduced by 128 days for attending an awareness course, and that his DVLA licence was reinstated in March 2011. Members were however advised to note that

following disqualification, policy recommendations were that at least 5 years free from convictions should normally elapse from the date of the restoration of the DVLA licence before an application is reconsidered – that being 5 years from March 2011. It was confirmed that Mr Licata continued to drive after the offence, until the conviction. The Chair reminded members that in the minutes of the Licensing Committee of 8 April 2011, members had been minded to give Mr Licata a shorter 'waiting period'.

Mr Licata attended the meeting and spoke in support of his application. He stated that this was the fourth occasion he had reapplied for his licence and that on the first occasion, the committee had given him a 'two year ban'. He said 5 years had now passed since the offence and that he had been in the Gulf during this time driving with a clean licence and he felt he was now worthy of having his licence renewed.

Members questioned the two year shorter 'waiting period' and the Chair read out the resolution from the relevant meeting in 2011. The Chair pointed out that subsequent to this, in February 2012 Mr Licata was convicted for a drugs offence which had subsequently affected the committee's decision.

One member clarified with Mr Licata that he was walking and not driving as a licensed taxi driver when the drug offence occurred, and so questioned what bearing that had on the licencing decision today. The Chair replied that the committee had to decide what weight to give to this situation.

Another member questioned Mr Licata's comment of having a 'clean' driving licence, to which the Officer replied that Mr Licata didn't have any current points and that if he sent his licence to DVLA the points on it would come off. However a drink-driving offence, which had incurred a ban but no penalty points, would remain noted on the licence for 11 years.

In summing up Mr Licata said in relation to the drugs offence that he had been going through a bad divorce when he had lost everything and had been unable to see his son. He was an ex-professional footballer and had been working in the Gulf where rules on drinking and drugs were very strict. He just wanted to put this phase of his life behind him and get on with his life.

Members adjourned from the Chamber to make their decision at 2.20pm. Members returned to the Chamber at 2.41pm with their decision.

Before the decision was given, the Chairman reported that the committee had not been of one mind, some believing that the nature of the offences was serious and in exercising leniency this would send out the wrong signal to others, and other members saying that this reflected a bad period five years ago in Mr Licata's life, that he was now a fit and proper man to drive and to let him move on with his life.

Members had the following recommendations to determine:

1. Mr Licata's application for a Private Hire driver's licence be granted because the Committee is satisfied that he is a fit and proper person to hold such a licence, or

2. Mr Licata's application for a Private Hire driver's licence be refused as the Committee considers him not to be a fit and proper person to hold such a licence.

However the Chair wished to add a condition to No.1 above, that being, if Mr Licata was convicted of any offences of any description, that his licence be reviewed and brought back to committee.

Upon a vote on this amendment, it was 6 for and 0 against.

The Chair also wanted to see proper and continued evidence of insurance – not weekly or pay-as-you-go insurance - and Mr Licata agreed that if a licence was granted and he applied to license a vehicle of his own, or drove another person's licensed vehicle, he would bring in evidence of his insurance.

Upon a vote, it was (5 for, 5 against) carried on the Chair's casting vote

RESOLVED, that Mr Licata's application for a Private Hire driver's licence be granted because the Committee was satisfied that he was a fit and proper person to hold such a licence, but that if Mr Licata was penalised for any future offences, that his licence be reviewed and brought back to committee.

6. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer, Phil Cooper, introduced the report concerning the review of Mr Mozir Choudhury's Hackney Carriage Driver's Licence. Mr Choudhury had held a Hackney Carriage Driver's Licence with Cheltenham Borough Council since 2008, but in October 2014 he had been convicted of a driving offence, details of which were included in the background papers. The Officer informed members that Mr Choudhury had 5 penalty points imposed on his DVLA driving licence, but had no other current endorsements.

The Officer advised that members needed to ensure that Mr Choudhury remained a fit and proper person to hold such a licence and pointed out that members had the option of adding a requirement that Mr Choudhury complete the approved road safety driving test within 3 months of the decision date if they allowed Mr Choudhury's licence to continue. If the committee revoked the licence, the Officer advised the Committee that they should also consider whether the revocation should have immediate effect in the interests of public safety.

Mr Choudhury attended the meeting and spoke in support of his review. He explained what happened on the day of the incident and how on turning right a motorcyclist travelling at speed hit the back of his vehicle.

A member queried why Mr Choudhury's Solicitor advised him to plead guilty if his car was stationary and the Legal Officer, Vikki Fennell, advised that she was unsure why he was accordingly advised.

In response to questions from members, Mr Choudhury advised that:

- The incident had taken place in daylight at 3.15pm
- Only the back wheel was on the highway and that he was stationary in the entrance to Bookers as two other cars were coming out towards him.

- When he turned right, the motorcyclist was not there.
- He estimated the motorcyclist was travelling at 10-15 mph

Members were divided on their opinion of the facts, one questioning that if his account was accurate, he should not have been convicted and another suggesting that he was nonetheless impeding the main highway and had not completed the manoeuvre in a safe manner and thus his conviction for driving without due care and attention seemed reasonable.

The Chair halted any further speculation on the incident as members were there to discuss his licence not the conviction. Having pleaded guilty to the offence and been convicted of it, it was not for the Committee to consider his guilt.

A member moved to add the condition of attending the driving assessment course to the recommendation which was seconded, and also moved to vote on the refusal first.

Upon a vote to revoke the licence, it was 2 for and 8 against.

Upon a vote to add the amendment of the condition to attend the road safety test to the substantive to continue to allow Mr Choudhury to keep his licence, it was unanimous.

Upon a vote on the substantive plus the added condition, it was 9 for and 1 against.

Resolved, that Mr Choudhury be permitted to continue to hold a Hackney carriage driver's licence as the Committee considered him to be a fit and proper person and that Mr Choudhury attend the approved road safety driving test within 3 months.

Councillor Flynn left the meeting.

7. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A BOARD

The Licensing Officer, Phil Cooper, introduced the report concerning Mr Joseph Hall's application for permission to place an 'A' Board on the highway to promote his skateboard and clothing store located on the first floor of 24 Rodney Road, Cheltenham.

The Officer informed members that the application had been brought to committee because it did not comply with the Council's current policy relating to objects on the highway. The policy allowed A-boards for businesses such as Mr Hall's with no street frontage, but stipulated that such A-boards must be immediately adjacent to the entrance to the premises. Mr Hall proposed placing the A-board on the High Street near to the junction with Rodney Road. The size of the proposed A-board was within the permitted size of the Council's policy.

Appendix A and B of the report showed the proposed location and image of the A-board.

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The Officer advised that the Committee needed to decide whether to allow the A-board to be placed on the highway if they were satisfied that there were sufficient reasons to deviate from the normal policy, or to refuse the application because it did not comply with the policy.

Members had several questions about the location and security of the A-board, to which the Officer replied as follows:

- The location was opposite the entrance to Rodney Road, a bit further along from Next, near the two gold post boxes.
- There were no other vendors in that particular area on a regular basis, although one vendor was a little further along the High Street and another one at Christmas time only.
- The A-board does not have to be secured but the committee could stipulate this if they wished.
- The highway could not be dug up to secure the A-board but it could be chained to the post that the picture in the Appendix showed it leaning against to prevent it from being moved.
- The A-board also had to be weighed down sufficiently to avoid it falling over.

One member had visited the site of the store and reported it was probably some 40-50 metres from the High Street, on the first floor above the Swedish restaurant. He informed members that the word skateboard was neatly engraved on the windows in the hallway, but that he could see the need for an A-board.

Mr Hall attended the meeting and spoke in support of his application. He confirmed that he had read the guidelines and was aware he was outside these, but that he had chosen the position as best as he could.

In reply to questions from members, Mr Hall said that the pavement outside the premises was too narrow to allow an A-board, that the Swedish restaurant already had a sign projecting from the building and that the picture submitted of the A-board was a mock up and that there was a hand pointing in the direction of Rodney Road.

Mr Hall informed members that he had been trading from a shop in Bath Street for 3 years and was still trading from there, but had now split the business in two. He didn't have an A-board in Bath Street but there was shop frontage. He confirmed that he had only been trading in Rodney Road for a month and thus it was too soon to tell if a lack of publicity boards had affected business. He stated that it was a niche market with no other similar establishments nearby and, when asked, confirmed it was primarily a destination address. He also confirmed that he advertised on social media, google, business listings, yellow pages etc.

Some members empathised with Mr Hall and could see the reasoning for his request for an A-board, but were minded that allowing this could set a precedent for others in Rodney Road who also didn't have much frontage, leading to a proliferation of A-boards.

Upon a vote to approve the A-board, it was 4 for and 4 against. The chair took the casting vote against the recommendation.

Upon a vote to refuse the A-board, it was 5 for and 4 against.

Resolved, that Mr Hall's application be refused because Members were not satisfied that the A-board complied with the Council's adopted policy in respect of objects on the highway.

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

None

9. DATE OF NEXT MEETING

9 January 2015

Roger Whyborn
Chairman

Cheltenham Borough Council

Licensing Committee – 9 January 2015

Application for a Private Hire Driver's Licence

Report of the Licensing Officer

1. Executive Summary

- 1.1 An application has been received from Mr MD Khairul Islam for a Private Hire driver's licence.
- 1.2 Mr Islam has passed all of the assessments required for the grant of a licence. However Mr Islam failed the approved road safety driving assessment on 4 occasions between July and October 2014. He passed the test with a satisfactory drive on the 5th attempt in November 2014, albeit with several comments from the driving assessor relating to improvements still required.
- 1.3 In light of this Members of the Committee should be aware of the facts because of:
 - 1.3.1 The nature of the test failures; and
 - 1.3.2 The need to ensure that Mr Islam 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 Islam's application for a Private Hire driver's licence be granted because the Committee is satisfied that he is a fit and proper person to hold such a licence as he has passed all of the assessments required under the Council's current adopted policy; or**
- 1.4.2 **Mr Islam's application for a Private Hire driver's licence be refused as the Committee considers him not to be a fit and proper person to hold such a licence due to the number of occasions on which he failed to pass the road safety driving assessment.**

1.5. Implications

- 1.5.1 **Financial** **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125
 - 1.5.2 **Legal** There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.
Contact officer: Vikki Fennell
E-mail: vikki.fennell@tewkesbury.gov.uk
Tel no: 01684 272015
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2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Private Hire driver's 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 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.

4. Probity in Licensing

4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.

4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.

4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:

- Be made on the individual merits of a case.
- Have regard to all relevant national and local guidance.
- Be made impartially and in good faith.
- Be made by the body that receives all the relevant information and evidence.
- Relate to the issue or question placed before the committee.
- Be based only on consideration of relevant and material matters.
- Be rational and reasoned.
- Be made in a way that does not give rise to public suspicion or mistrust.

4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.

4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.

4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.

4.7 Where Members propose to make a decision contrary to the officer recommendation clear licensing reasons must be established and these must be seconded and minuted.

5. Licensing Comments

5.1 Members should refer to the enclosed background papers for a breakdown of each of the driving assessments undertaken (4 failures and 1 pass) along with the driving assessor's comments relating to each. Members should note that whilst the 5th and final driving assessment was passed as "satisfactory", the assessor nevertheless made comments about deficiencies in the applicant's driving ability.

5.2 Mr Islam 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.

- 5.3 The Committee must be satisfied that Mr Islam is a fit and proper person before agreeing to the grant of a licence, bearing in mind that the overriding consideration for the Committee is the safety of the public. The Committee must be satisfied that licensed private hire and hackney carriage drivers are safe drivers with good driving records and adequate experience.
- 5.4 Members are advised that Mr Islam has held a full UK driving licence since February 2011 and has no driving convictions or endorsements on his DVLA licence.

Background Papers

Service records

Officer's report refers to Cheltenham Borough Council's Policy, Guidance and Conditions for Private and Taxis, approved 15 July 2014

Contact Officer

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