

Licensing Committee

Wednesday, 31st May, 2017
6.00 - 8.30 pm

| Attendees | |
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| Councillors: | Wendy Flynn (Chair), David Willingham (Vice-Chair), Tim Harman, Paul McCloskey, Dennis Parsons, Garth Barnes (Reserve) and John Payne (Reserve) |
| Also in attendance: | Vikki Fennell and Louis Krog |

Minutes

1. APOLOGIES

Apologies were received from Councillors Collins, Lillywhite, Seacome, Wilkinson and Thornton. Councillors Payne and Barnes attended as substitutes for Cllrs Lillywhite and Wilkinson respectively.

2. DECLARATIONS OF INTEREST

Councillor Willingham declared a non-prejudicial interest in agenda item 7, being that the incident happened in his ward. Councillor Barnes declared a prejudicial interest in agenda item 8, being that the premises was in his ward and that he had previously declared an interest in this venue. Councillor Barnes would be allowed to speak as an objector and then withdraw from the debate.

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 12 April 2017 were approved and signed as a true record.

5. MINUTES OF SUB COMMITTEE MEETING

The minutes of the sub-committee meeting held on 29 March 2017 were approved and signed as a true record.

6. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Team Leader, Louis Krog, introduced the report regarding an application from Mr Adel Ahmadi for a Hackney Carriage Driver's Licence. Mr Ahmadi had declared a number of convictions on his application form that were outlined in the background papers, however his application fell short of the 10 years statutory time limit that should have elapsed since these offences. Mr Ahmadi had provided seven character reference letters in support of his application.

The Officer advised members that since the application did not comply with the council's convictions policy, that they should determine whether there were any

grounds to deviate from Policy if they felt Mr Ahmadi was a fit and proper person to hold such a licence; to refuse the licence or they did have the option to grant a licence for one year with a review in 12 months.

There being no questions to the Officer, the Chair invited Mr Ahmadi to speak in support of his application. Mr Ahmadi apologised for his behaviour and the mistakes he made back in 2007 and 2008 and told the committee that now, nearly 10 years later, he was a better person and very much wanted this licence to be able to better provide for his family and make a future for them.

In response to questions from members, Mr Ahmadi stated that he was 29 at the time of the offences and was Kurdish. He had come from a communist country to the UK to change his life and stated that he had been granted British nationality this year. In reply to questions about his drinking and dealing with stressful situations, Mr Ahmadi informed members, that on arriving in the UK, he was alone, couldn't speak English, had no family and was in a country that was very different to his where you had to defend yourself. He continued that as he started to learn English and the English way of life, things improved and he became happier with life and therefore didn't need to drink. He said he had also learnt about the differences in cultures between this country and his, and not to retaliate but to call the Police if there was a problem.

There being no further questions, the Chair invited the applicant to sum up his case. Mr Ahmadi stated that he was a different person to 10 years ago, that he loved driving and wanted to provide for his family and not to let them down. He thanked the committee for giving him this opportunity to be present and to become the best taxi driver in Cheltenham.

In the ensuing debate, and taking note of the character reference letters, members were of the consensus opinion that Mr Ahmadi's behaviour had changed since arriving in the UK, that he had turned his life around and by taking British citizenship had shown his dedication to the UK. They accepted the traumas encountered in moving and settling in a different country and felt his previous record should be put in the past. Mr Ahmadi had presented himself as a family man with the responsibilities that this entailed in providing for them and that over the course of 10 years his manner had changed and matured.

Several members expressed their view that they did not favour the granting of a licence for one year only, stating that if there was a problem, he would be before the committee in any case.

There being no further comments, the Chair moved to vote on 1.3.1 of the report being in favour of granting the application.

Upon a vote it was unanimous, 7 for, 0 against.

RESOLVED THAT, Mr Adel Ahmadi's application for a Hackney Carriage Driver's Licence be granted for the regular period of 3 years as the Committee was satisfied that Mr Ahmadi was a fit and proper person to hold such a licence.

7. REVIEW OF PRIVATE HIRE DRIVER'S LICENCE

The Licensing Team Leader, Louis Krog, introduced the report regarding a review of Mr David Beale's Private Hire Driver's Licence PHD309. On 13 March 2017 a complaint was made to the council relating to Mr Beale, who had been witnessed colliding with a stationary vehicle in Bramery Business Park car park, not stopping and driving off. Further investigation by Officers revealed that at the time of the collision, Mr Beale's then licensed vehicle did not have a valid MOT. It had expired on 17 February 2017. Further details and interview notes were contained in the background papers.

The Officer informed the committee that they needed to decide whether they felt Mr Beale was a fit and proper person to hold such a licence; to continue his licence but with a written warning; to revoke the licence and if revoked whether to do so with immediate effect in the interest of public safety.

In reply to questions from members, the Officer informed the committee that a taxi driver without a valid MOT would have their licence suspended immediately or in the case of damage to the vehicle, if the damage was not serious, 28 days rectification notice would be served on the proprietor. He confirmed that without a valid MOT, insurance was also invalidated and that the renewal of a MOT was down to the owner of the car and not for the council to remind the driver. However, as a matter of courtesy the council did send renewal reminders and one was sent to Mr Beale on 2 February 2017. The Officer also clarified that it was a policy requirement for drivers to report an accident to the council.

There being no further questions to the Officer, the Chair invited Mr Beale and his representative Mr Burt from Taxi Law Birmingham, to address the committee. Mr Burt informed members that his client had been a taxi driver for 14 years, during which time he had not had any issues with his documentation being in order. He stated that Mr Beale had been before the Licensing Committee once before concerning an altercation about an MOT test carried out at the Depot and that he had appealed and his licence had been reinstated. Mr Burt continued that Mr Beale had purchased the vehicle from another taxi driver and had assumed that the MOT renewal date was the same as the licence renewal date, that being 26 March and felt that the seller should have notified Mr Beale that the two did not go hand in hand. Mr Burt said that his client was aware that the onus was on him to renew his MOT and that he should have checked, but that he had some family problems at this time and this had been overlooked. He further advised that once Mr Beale had been alerted, as a result of the incident, that his MOT was invalid, Mr Beale made arrangements immediately to have the MOT carried out and to resolve the incident in the business car park. He reiterated that Mr Beale had been a driver for many years and was aware of the consequences of not having his papers in order and Mr Burt asked the committee not to revoke the licence but to consider giving Mr Beale a warning or a fine.

In reply to questions from members, Mr Beale confirmed that he only knew his MOT had expired as a result of the complaint to the council on 13 March and that as soon as he was aware of this he took the vehicle for its test at Ubico (the council testing station) on 15 March, but that it failed. He then parked the car up until the MOT had been passed. He confirmed that he had been driving paying passengers between the period 17 February to 13 March as he did not know his MOT had expired.

The Officer informed the committee that the vehicle was no longer licensed with the council and that it had failed its MOT on a number of issues, two of which were considered as dangerous. He continued that the car had been presented to Station Garage on 16 May for a re-test, when it had also failed, finally passing on 18 May. The Officer also confirmed that Mr Beale was a private hire driver with Cheltenham Borough Council but that he did not have a vehicle licence with the Council.

In reply to questions from members, Mr Beale confirmed that he had been carrying passengers for the period when his vehicle did not have a valid MOT.

Members were surprised and concerned that being a taxi driver of 14 years and buying a car from a taxi driver friend of 20 years that Mr Beale had not checked the vehicle and was not aware of the deficiencies in the car. Mr Beale informed members that he regularly carried out routine checks on the vehicle and that he knew his responsibilities and the requirements expected of him. He also confirmed that he was now driving this vehicle privately and had a taxi licence for this car with Tewkesbury Borough Council.

In summing up, Mr Burt stated that his client should have been aware that his MOT had expired, but that he thought the licence renewal and MOT renewal went hand in hand and that he would not have driven the vehicle if he had known the MOT was invalid. His client was now driving this vehicle as a taxi with another borough and asked the committee to consider Mr Beale retaining his licence and driving in the Cheltenham Borough as well.

In the ensuing debate members expressed their concern about Mr Beale's representations when he had stated on several occasions that he checked the vehicle every day, as, if this was the case, they felt he would have seen the faults reported in the MOT, in particular the bonnet catch failure which could have been very dangerous and the fuel leakage which was a hazard to cyclists. They felt Mr Beale was aware that his car was not road worthy and this impacted on the safety of the Cheltenham public. Members were not convinced that the car had been purchased from a taxi driver friend without any explanation of the condition of the car or checking for faults which could not all have happened within the time since the purchase.

Members stated that the Committee was not there to punish taxi drivers but to protect the Cheltenham public and they were especially worried that the vehicle had been driven without a valid MOT, which invalidated the insurance and put passengers at risk.

Members also did not think that the actions of Mr Beale were fit and proper in relation to the accident, since Mr Beale did neither stop and leave a contact number nor report the incident to the council within 72 hours.

There being no further discussion, the Chair moved to vote on:

- 1.4.1 – the licence be continued with no further action; 0 for, 7 against
- 1.4.2 – the licence be continued with a written warning; 1 for, 6 against
- 1.4.3 – the licence be revoked; 6 for, 1 against
- 1.4.4 – the licence be revoked with immediate effect; 6 for, 0 against, 1 abstention

RESOLVED THAT Mr David Beale's private hire driver's licence be revoked as the Committee considered him to no longer be a fit and proper person to hold such a licence and that the licence be revoked with immediate effect in the interest of public safety.

The Legal Officer informed Mr Beale that he was no longer able to drive as a private hire driver with immediate effect and that he had the right of appeal to the local magistrates court to be made within 21 days of the date of the decision letter.

8. DETERMINATION OF AN APPLICATION FOR A SEXUAL ENTERTAINMENT LICENCE

The Licensing Team Leader introduced the report regarding an application made by Mr Lloyd Christopher Winstanley-Cox on 7 April 2017 for a Sexual Entertainment Venue (SEV) licence for the premises located at 12-14 Bath Road, Cheltenham, currently known as Fantasy.

A copy of the application form was attached as Appendix A to the report, the premises layout was shown at Appendix B, the location map at Appendix C and a map of Cheltenham's central shopping area at Appendix D, defining the area deemed appropriate for SEVs under the Council's policy.

The Officer reported that there had been no objections from the Gloucestershire Constabulary, but five representations had been received from members of the public primarily concerning the character of the relevant locality, the fact that the premises fell outside the area deemed appropriate for a SEV and issues around gender equality. The full summary was set out in the background papers. The Officer advised members to consider the mandatory and discretionary grounds for refusal, to note the government guidance that moral objections to sexual entertainment were not relevant and to note the council's Public Sector Equality Duty.

In reply to a question from a member, the Officer confirmed that the Council's Policy was not gender specific and thus could allow male or female performers and customers. One member commented that the committee needed to consider whether the location of the premises would cause any harm to the area, in that the premises fell on the other side of the road to that in which a SEV could be granted.

Councillor Garth Barnes, a member of the Licensing Committee but also ward member for the area in which the premises was located, spoke as an objector, and subsequently withdrew from the debate. Cllr Barnes stated that this was the 3rd or 4th application of this kind for this premises and that none of them had stayed in business very long. He expressed concern following the site visit of evidence around the building of what had gone on in the past and the state of the building both inside and out. He was concerned about no visible fire escape and the flat roof with no safety barrier where people could smoke and was in view of residential properties. He objected on grounds of locality it being near residential areas and questioned why the licence was needed 365 days a year with opening times of 9pm to 4am when it was mainly targeted at race week. Cllr Barnes recognised it was a legal activity and stated he was not arguing on moral grounds, but suggested there was no public interest in this club, that it

was in the wrong place, that he was not convinced the applicant would substantially improve things and ultimately it was against council policy.

The Chair invited Tess Beck and Leslie Painter, two objectors, to address the committee. Their objections were mainly based on location, being in a residential area, the negative impact a SEV would have being near to a wine bar and other local businesses and in an area defined as having zero SEVs and on gender equality, stating that although the activities were gender neutral, it was usually always women performing and men watching. It was pointed out the Fire Officer and Environmental Health Officer had had concerns about these premises last time and that the building had not been looked after. The objectors recognised that Cheltenham had been awarded the Purple Flag for its diverse and attractive offer within the night time economy, but they felt a SEV was not appropriate in this location, that consideration should be given to females living and working in Cheltenham and questioned why some areas of the town should be off limits for girls. Leslie Painter confirmed that she had not opposed the SEV licence at the Two Pigs as the premises was in the centre of town and not in a residential area.

The Chair invited Mr Winstanley-Cox to speak in support of his application. He thanked members for making the site visit and agreed that the venue needed a large amount of work, but felt there was an inherent opinion based on the previous owners. He pointed out that he had only been aware of one objector speaking and was unaware one was a councillor. However he wanted to be transparent and wanted the committee to learn a bit about his background. He stated he was 36 years old and had been in the licensing trade for 18 years and was currently the premises licence holder of two pubs in Worcester which he owned and had turned around in the last three years. He had no criminal convictions and had been a Support Manager for a centre for offenders, which assisted with women victims of abuse. He had also worked with charities and was a co-owner of a security company which had supplied security to a venue in race week in 2016 and 2017. Primarily he was a businessman who could see potential for this form of entertainment and he welcomed the challenge to improve this premises and alleviate previous perceptions of it. He had noted the objections to the venue, location and previous owners, but stated he wanted to make it more up-market, a gentleman's club with an offer to a certain section of the community. He pointed out to members that the premises was merely 12 metres outside of the zone permitted for SEVs and that he would ensure that there would be nothing on the outside of the premises indicating the nature of the entertainment. He understood people's concern on the morality issue and that Cheltenham prided itself on its Purple Flag award and stated he wanted to enhance this by providing a safe environment for customers and public.

In reply to questions from members about his business plan and opening times, Mr Winstanley-Cox stated that with business rates of £26,000 he would have to open the club as soon as possible and could implement a turnaround of the premises within 3 weeks to get it in a state fit for opening. He said he wanted the flexibility of a 7 day licence, although in reality the club may only open 4 days a week on a regular basis and that he wanted earlier opening times for race days. His opening times had been based around the Two Pigs SEV licence that had been approved. He confirmed that the lease would be for 10 years during which time he wished to build up the business, unlike previous business models and owners who had closed down the club for reasons other

than business. He suggested that around 20-25 customers per night would be sufficient to break even over a one year period. The Officer confirmed that the application requested opening times from 6pm on race days.

There being no further questions to the applicant, Mr Winstanley-Cox summed up by reiterating he was aware of the concerns, but asked members to see it as a business matter not a moral one and stressed that if the premises was on the other side of the street then the location would be acceptable and that there was no further cause for concern with the location being where it was.

During the ensuing debate, some members felt the business case was not sufficiently robust to succeed, however the Licensing Officer pointed out that the viability of a business was not a consideration for the committee to take into account. Other members felt that a lap dancing venue in this location was no more intimidating to women than the presence of the neighbouring Bierkellar and pub and that the opening times of the club from 9pm to 4am would have little or no impact on other businesses in the area. There having been no objections from the Police, members felt it was in the best interests of public safety to have licenced SEVs where conditions and policies could be regulated, rather than sexual entertainment taking place randomly 11 times a year. The view was expressed that there was no additional harm to the area being that the line drawn in the policy permitting SEVs fell on the other side of the road and thus it could be viewed as irrational to refuse on this point. As the council policy on equality allowed for either gender of performers or audience, some members felt due consideration had been given to the Public Sector Equality duty of care and also felt that although each application was taken on its own merit that as this premises had been granted a licence previously, that it would not be entirely rational to refuse and it was difficult to find reasonable grounds for refusal. If granted, members requested that the following conditions be added to the licence:-

- There be no external indication as to the type of premises and all advertising and signage be regulated and approved by the council
- Works relating to the state of the interior of the building be approved by the Environmental Health Officer.
- There be no smoking on the roof of the premises
- Amend standard condition 21 to include the wording of no exchange of information by email or social media

The applicant stated that he would be happy to accept these conditions.

There being no further debate, the chair moved to vote on the approval of the application, with the addition of the above mentioned conditions and including the additional hours for race days.

Upon a vote, it was 4 for, 2 against.

RESOLVED THAT, an application by Mr Lloyd Christopher Winstanley-Cox for a Sexual Entertainment Venue Licence at the premises located at 12-14 Bath Road, Cheltenham, be approved subject to the additional conditions as outlined below:

- The licence is granted subject to the approval and sign off by the Senior Environmental Health Officer of Cheltenham Borough Council in relation to the satisfactory completion of the works required at the premises.
- There will be no smoking on the roof of the premises.
- An amendment to standard condition no. 21 to read “Performers must not solicit, divulge or exchange with customers any personal contact information including but not limited to: addresses, phone numbers, email address or social media profile information. Performers must not liaise with customers off the premises or incite customers to purchase alcoholic drinks”.
- All signage used at the premises and on its liveried vehicles must be approved by Cheltenham Borough Council licensing officers.

9. BRIEFING NOTE

The Licensing Team Leader presented the Briefing Note on the review of the Licensing Service for the year 2016/17, which the Vice Chairman of the committee had previously requested. This outlined the success of both the Licensing team in dealing with over 2000 licensing applications in the 16/17 financial year and the Licensing Committee in dealing with 18 cases that were referred to them, with very few appeals. The review also outlined the Place and Economic Development service transformation work that the licensing service had been heavily involved in.

Councillor Willingham placed on record his thanks to Louis Krog for this briefing note and remarked on the council's good record and decision making, as well as noting the successful prosecutions. It was requested that this Briefing note be produced annually and that if the Cabinet member was happy to do so, to share these statistics with full council. With the establishment of two sub-committees under the new structure, a member questioned the split of cases referred to the two sub-committees. The Officer replied that he hoped the sub-committees would be more pro-active and that there were a lot of ancillary matters that he wanted to bring to the sub-committees in the future.

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

None

11. DATE OF NEXT MEETING

Monday 10 July 2017 at 6pm.

Wendy Flynn
Chairman