

Licensing Committee

Wednesday, 5th December, 2018
6.00 - 8.35 pm

| Attendees | |
|----------------------------|---|
| Councillors: | David Willingham (Chair), Paul McCloskey (Vice-Chair), Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler |
| Also in attendance: | Vikki Fennell and Louis Krog |

Minutes

1. APOLOGIES

Apologies were received from Councillor Harman.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

There were no public questions.

4. MINUTES OF LAST MEETING

The minutes of the Licensing meeting held on 6th June 2018 were signed as a correct record.

The committee wished to note that the makeup of the committee had now changed since the meeting on the 6th June 2018.

5. MINUTES OF SUB COMMITTEE MEETINGS

The minutes of the licensing sub-committee meeting held on the 7th November 2018 were signed as a correct record.

6. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer introduced the report, he explained that Mr Laurentiu-Gabriel Raducu had applied for a Private Hire driver's licence, however, he had penalty points on his DVLA driver's licence which he had declared on his application form. He advised that the application had come before the committee as the licencing policy states a new driver's licence will not be granted unless the applicant held a full UK driving licence for a minimum of 12 months prior to the application being made and must be free of convictions and endorsements for at least one year. He advised that the offence was considered a minor traffic offence as Mr Raducu had received 3 penalty points and the details of the offence were contained in the enclosed background papers. He confirmed that Mr Raducu had completed all other required tests and assessments to obtain a Private Hire driver's licence.

The following responses were offered to Members questions:

- Mr Raducu had held a UK drivers licence since 2016 but had 12 years driving experience;
- The Licensing Officer confirmed that they were reviewing the licensing policy and the relevance of convictions would be picked up as part of this review;
- The Legal Officer confirmed that the committee must determine each case on its own merits and could deviate from the policy if it had good reasons for doing so.

Mr Raducu explained that when he had applied for his private hire driver's licence he was under the impression that he must have no more than 6 penalty points and so he could still apply for a licence despite the fact he had 3 penalty points. The Licensing Officer explained that it was still possible to make an application with penalty points, however, if officers have concerns the applicant will be brought before the licensing committee.

Mr Raducu was invited to speak in support of his application, he explained that:

- He had already been working as a taxi driver and had a Tewkesbury plate licence, he had also been working at a driving school;
- He had applied for a licence in Cheltenham as this is where he lived and it would be more convenient for him to work here also;
- The occasion when he had received the 3 penalty points was when he was driving on the A40 in Oxford, it was 11pm at night and there were very few other users on the road. It was a 30mph zone and he believed he was doing around 46-47mph. He explained that the speed limit had suddenly dropped from 50mph to 30mph and he had not reduced his speed in time;
- He had incurred no further penalty points since this incident;
- He had requested to attend the speed awareness course when he had received the form but had not been given the option to and subsequently had to pay a £100 fine and take the 3 points. The Legal Officer advised that drivers are only given the option to do the speed awareness course if they are 10% over the speed limit if it is in excess of this they must take the points;
- He had held a licence with Tewkesbury Borough Council since August 2017 and he confirmed he had declared the points to Tewkesbury.

The application was then open to debate by Members. They noted the following:

- One Member believed this to be a one off event and considered Mr Raducu a safe driver. They felt that he had learnt his lesson.
- Other Members agreed that it was an easy mistake to make when the speed limit suddenly drops. They felt it would be harsh to deny Mr Raducu his licence based on a minor traffic offence and the fact he had no previous offences and had been truthful on his application form.

Members proceeded to vote on section 1.4.1 of the report to Grant Mr Raducu a Private Hire driver's licence because the committee considers him to be a fit and proper person to hold such a licence

Upon a vote it was unanimously for.

RESOLVED THAT

Mr Raducu be granted a Private Hire driver's licence because the committee considers him to be a fit and proper person to hold such a licence.

7. REVIEW OF PREVIOUS DECISIONS

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

A APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer introduced the report, he explained that an application had been received from Mr Steven Palmer for a street trading consent to sell Christmas trees, natural decorations and wreaths from an enclosed area on Pittville Lawn, the location of the proposed trading pitch was highlighted at Appendix 1. He reported that Mr Palmer had applied for a time limited consent from the 30 November 2018 – 21 December 2018 on Monday – Sunday from 08:00 – 21:00.

He reminded Members that when determining the application they should give consideration to the assessment criteria outlined at paragraph 3.2 of the report and also be mindful of the fact that there may be times when consent may be sought otherwise than in accordance with the policy for special one-off events.

He confirmed that no objections had been received from any of the responsible authorities. However, the Senior Environmental Health Officer had recommended a number of conditions relating to noise and lighting conditions and these were outlined at paragraph 4.2 of the report. A number of objections had been received from interested parties and these were outlined in the accompanying background papers.

The Licensing Officer advised the Committee that they must determine the application with a view to promoting the council's adopted policy and should not arbitrarily deviate from the council's policy. He further noted that as the proposed trading location falls outside the scope of the policy's permitted locations the application should be determined on its merits.

He briefly outlined the council's process for granting permission for events to go ahead on council owned land and explained that events occupying council owned land were subject to a land use agreement which the occupier needed to comply with when occupying the land. He explained that as this is an officer delegated function and the process is the responsibility of the council's Green Space Team no consultation takes place. However, in some instances, occupiers also require a formal authorisation to do what they propose to do as part of their operation and in this case were required to apply to the council's licensing department for a trading licence. He advised that the consultation on this application was open from 20 November to 30 November, however, due to a technical issue with the council's public access system, the consultation was extended and additional information was made publically available on the council website.

The Licensing Officer explained that Mr Palmer had already begun trading as he was charging an entry fee which takes him outside the scope of street trading legislation. As such, whilst he continues to charge an entry fee, the area is not one to which the public have access without payment and consequently he is able to trade without a trading licence.

The Chair explained that whilst there had been a number of complaints they had to be mindful that a lot of the interested parties concerns were not material considerations for the licensing committee. He noted that there was evidently an issue relating to public consultation prior to the issuing of Land Use Agreements for commercial activities in our parks and agreed to refer the committee's concerns to Cabinet. He reiterated that this was no criticism of any of the officers in the case, as they had all followed the current policy, however, the policy evidently needed reviewing.

One Member noted that the current arrangements whereby visitors had to pay 1p to enter the site were farcical and it was easy to enter the site without paying. They suggested that should the application be refused the site should not open until they rectified the payment arrangements.

One Member noted that in the current financial climate, and with the removal of central government financial support, councils needed to investigate alternative ways to generate income, including permitting commercial activities in parks.

In response to Members questions, the Licensing Officer advised that:

- There was a planning condition on Montpellier and Imperial Gardens that restricted the number of events to 70 days a year. If the committee were minded to do the same for Pittville Lawn they would need to raise this with the planning committee.
- As there had been technical issues with the public access system, they had done additional consultation via the local ward councillors who had distributed letters to all the residents who surrounded the park. They had also uploaded information to the council's website.
- In response to a query from a Member about the weight that could be applied to the appropriateness of the event, the Licensing Officer advised that Members must give consideration to the assessment criteria outlined in the officers report regarding the needs of the area and that the appropriateness of the event in terms of its appearance could form part of Members discussions.
- He advised that when he had visited site that day there had been no music playing and the lights were all pointing inwards and Environmental Health had been satisfied that there was no light pollution from the site.

The applicant explained that the reason they were charging 1p was because they had had no legal agreement on what was acceptable and so had devised their own solution to the problem. The Licensing Officer explained that from his site visit it had appeared they were requesting a charitable donation, he advised that this was different to charging an entrance fee and would require a separate permit.

Mr David Potter was then invited to speak in objection to the application.

- He explained that he lived diagonally adjacent to the site.
- The main reason he had attended the committee meeting was to observe how the matter was dealt with by the Council.
- He had no concerns regarding the noise and light pollution, his main issue was with the fact that they were running a commercial enterprise in the park which had no benefit to the local community.
- The length of time the site was open each day was also a concern and the unsightly appearance of it.
- He felt the operation was better suited to other locations such as the racecourse.

Mr Palmer was invited to speak in support of his application. He advised that:

- They had dealt with many councils previously who all had different processes and so when he had signed the land use agreement in September he was not aware that he had to apply for a trading licence;
- They were surprised to see so many objections and had never received this many at other locations;
- They were genuinely unaware they were unable to advertise and had immediately rectified this when they had been notified;
- As a company they were passionate about Christmas trees and wanted to give residents an enjoyable experience when choosing a tree;
- Their operation had been well received at other locations and this year they had decided to expand to Cheltenham where they thought it would also be welcomed;
- They had received extremely positive feedback from all those who had visited the site so far.

Mr Palmer offered the following responses to Members questions:

- They had had 5 pallets of trees delivered in the first instance which had equated to 500 trees. Based on current trends and experience they would not sell the full 500 and would likely have to take trees away. There would, therefore, be no further deliveries by crane.
- They used no noisy machinery just simply sliced off the bottom of the tree with a handsaw.
- There were 2 site managers on site over night for security. They did not play any music and used low level LED lights which faced inwards and downwards, these were turned off at 9pm every evening.

In the Members debate, they noted the following:

- One Member felt that the public still had substantial space in the park to use and enjoy. They also felt that should you live near a park you should expect a variety of events to take place and interesting events were beneficial to the community. They did, however, feel that there was an issue of competition given that other established traders were also selling Christmas trees in the area.
- One Member felt that the £2625 paid by Tree Amigos was a sizeable contribution to the park and would considerably help the incredible work that Friends of Pittville already did in maintaining the space.

- Members noted a similar situation whereby a licence was required for the picnic in the park event. They reasoned however that the scale of Tree Amigos was considerably smaller and not taking place over a bank holiday weekend as picnic in the park had been.
- Members were alarmed that the land use agreement had been signed before the local ward councillors had been made aware of the event.
- One Member felt that a lot of the objector's comments were invalid, although they did agree with their concerns regarding the highways, although this did not appear to be a big issue considering the number of trees they had sold thus far. They also felt that the park was for all of the Cheltenham residents to enjoy, not just those who resided in Pittville.
- One Members main concerns were around the parking and the light pollution in the evenings, they explained that they would be more comfortable if the opening hours were reduced so it closed at 7/8pm.
- One Member reasoned that the park was situated close to a busy road which generated a considerable amount of noise anyway, they felt that any noise as a result of Tree Amigos would be drowned out by the road in any event..
- Members agreed that Members concerns regarding the lack of consultation on land use agreements were valid, however, they had no reason to turn the application down on licensing grounds.
- One Member felt that there were no other fixed locations in the immediate vicinity that were selling Christmas trees and so there were no issues with competition. They also agreed with their colleagues previous comment regarding the noise from the nearby A road. They felt that the site looked reasonable and posed no risk to public safety. It therefore did not conflict with the licensing policy and they could see no reason for objecting to the application.

The Members proceeded to debate the opening hours and the possibility of amending them. Mr Palmer explained that he would be willing to amend the opening hours if it would satisfy Members. Following a discussion, one Member wished to formally propose amending the opening hours so the site closed at 8pm every day and opened at 9:30am on a Sunday. The Legal Officer reminded Members that should they be minded to amend the opening hours Mr Palmer could still charge an entry fee and open at the originally requested times. Some Members felt that there was a commercial benefit to having the same opening hours each day to save confusion for customers and reasoned that simply changing the hours wouldn't rectify residents' concerns.

In his final right of reply, Mr Palmer explained that:

- Due to the nature of the event, there were no real issues with parking as the event was spread across 3 weeks and so there was never a large influx of customers. They had the same event in London with twice as many customers and never had any issues with parking there;
- He sympathised with residents, however, felt that they had kept noise and light pollution to a minimum;
- He felt that they provided a nice environment to purchase a tree and reasoned that not many used the park in December anyway.

The Members proceeded to vote on whether to vary the opening hours to close at 8pm every day and open at 09:30am on a Sunday.

Upon a vote it was 2 in favour and 7 against.

Resolved That

The opening hours remain as applied for.

The Members had a short discussion regarding the conditions suggested by Environmental Health and agreed they were happy with them apart from the condition regarding site deliveries. They agreed that instead of requiring deliveries to be between 9am-5pm, the timings of deliveries should first be agreed with the Greenspace Team.

The Members voted on section 1.5.1 of the report to approve the application subject to the conditions suggested by Environmental Health because Members are satisfied that the location is suitable

Upon a vote it was 7 in favour, 1 against and 1 abstention

Resolved That

The application be approved because Members are satisfied that the location is suitable.

B MEETING CONDUCT

A Member wished to discuss the conduct of meetings and suggested the procedure be altered so that the applicant/licensee be given the final right of reply after Members have debated the application. The Licensing Officer confirmed that it was within the committee's remit to amend the procedure if they so wished. Following a discussion, the committee agreed that it was fair that the applicant had the final right of reply before the committee went to vote and once they had heard the debate.

One Member objected to declarations of site visits being declared at the start of the meeting as they felt this was misleading to the public if Members had conducted site visits but had not declared it. Following a discussion, Members agreed that there was an expectation that all Members conducted site visits prior to the meeting and didn't feel it was necessary to declare it.

C-COMMITTEE STRUCTURE

One Member wished to discuss the possibility of returning back to the previous committee structure which saw the full licensing committee deal with the majority of matters and then draw upon 3 Members from the full committee to deal purely with Alcohol and Gambling. They noted that the 5 Members who sat on the miscellaneous sub-committee got a great deal of exposure to cases which helped develop their skills as a Councillor whilst the other 5 Members rarely got called upon. They also felt that it was important that the Alcohol and Gambling committee was politically balanced.

Some Members felt that it wasn't rational for the full committee of 10 Members to meet to deal with minor applications and that was why the sub-committees

had been established. Some Members agreed that the current system of picking Members was unsatisfactory and suggested that instead of Members being picked on a first come first serve basis it be rotated.

It was agreed that further discussions needed to be had on the matter and a report formally brought before the committee to consider.

D STREET TRADER

The Licensing Officer informed the committee that there was an issue with a street trader on the high street which the committee needed to make a decision on. They explained that hoarding had been erected on the premises next to John Lewis which coupled with the street trader in that vicinity, had blocked the line of site to New Look.

Whilst the hoarding was a matter for Gloucestershire County Council they needed to make a decision on the street trader.

He explained that they had already requested the street trader move 6 inches to improve the line of site to New Look and whilst he had been sympathetic to the issue he felt it would be too inconvenient to move and so had refused. The Licensing Officer advised that under delegated powers the Director of Environment had the authority to vary the consent of the licence to force the street trader to move.

One Member felt that New Look were seriously disadvantaged and proposed that they call the street trader before the committee and revoke their licence. They felt that it was important that the Council sent out a strong message to local traders that they were on their side. Following a discussion, the committee agreed that the best course of action would be to allow officers to vary the consent and inform the street trader that if they did not comply their licence would be revoked.

9. DATE OF NEXT MEETING

6th March 2019

David Willingham
Chairman