

Licensing Sub-Committee - Miscellaneous

Wednesday, 5th February, 2020
6.00 - 8.25 pm

| Attendees | |
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| Councillors: | David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Angie Boyes (Reserve) |
| Also in attendance: | Vikki Fennell, One Legal & Louis Krog, Licensing Team Leader |

Minutes

1. APOLOGIES

Apologies were received from Councillor Wheeler.

Councillor Boyes acted as substitute.

2. DECLARATIONS OF INTEREST

The Chair stated that all five Members and the licensing team leader visited Club Covert on Monday lunchtime, and that he personally visited the ford in School Road, Charlton Kings, in connection with Agenda Item 5.

3. MINUTES OF THE PREVIOUS MEETING

A councillor asked for it to be made clear that the incidents reported by the police during race week were not related to any form of sexual assault. These amendments have now been made.

The minutes were then signed as a correct record of the meeting.

The Chair wanted to formally congratulate Colin Pilsworth and Licensing for the continuation of the Purple Flag accreditation. Further he wanted to congratulate Sarah Hughes and Licensing for the 4 successful plying for hire prosecutions and the successful street obstruction prosecution.

4. APPLICATION FOR A STREET TRADING CONSENT

The Chair explained to the applicant how consideration of his application would proceed.

Officer introduction

The Licensing Team Leader introduced the application for grant of a street trading consent, at a previously-used location on the Strand, trading between 8th November to 31st December 2020 at the times and on the days outlined in the application. An image of the trading van is attached at Appendix 2 of the officer's report. Members were advised that they could grant the consent if

they considered it appropriate in this location or refuse the application as it does not comply with street scene policy or for any other reason.

There have been a number of objections, included with the papers, and paragraph 3.2 of the officer report reminds Members to be mindful of the assessment criteria when considering whether to grant or not. Under 'licensing comments', the report sets out CBC's assessment criteria regarding number of locations and type of trading. This is not an approved location, but Members are reminded that policy does not necessarily fetter discretion. It is up to Members to take the needs of the area into consideration and the case's individual merits..

In response to Members' questions, the Licensing Team Leader confirmed:

- the location is the same as that used at Christmas 2019;
- the unit is a scaled-down version of that previously used and this was the version used at Christmas 2019;
- the site is not designated under policy but has been used by this applicant a number of times before and should be considered on its merits; and
- there have been no complaints to CBC about the unit during the Christmas 2019 season.

Applicant's address

The applicant said he has been trading since 1986, and 2020 will be his fourth year at this location. His family has traded for three generations, and last year invested a lot in a new custom-built, smaller unit to comply with what was required. It has been very successful, there have been no complaints, and he would like to continue trading at this location.

In response to Members' questions, the applicant confirmed:

- that the principal product would be pork rolls, turkey rolls, and Gloucester sausage. Coffee is secondary to this;
 - that later opening hours have been applied for on Thursdays, because although late night shopping is not as popular as it used to be, most shops stay open until 8-9pm leading up to Christmas;
- The Chair pointed out that the hours set out on the application are a maximum, not a requirement.

Member debate

Members made the following points:

- looking at the objections, these are the same every year, and Members did not believe it was particularly fair to say this outlet competed with Sainsbury's – as the products were not the same. There are no concerns about the operator, who has traded for a long period without significant problems;
- there are two types of competition – direct and substitute – and as people only eat lunch once, this business represents a substitute. The High Street faces many difficulties, competing with on-line shopping and retail parks, and as a result more food and beverage outlets are opening. Established operators have to pay high business rates – the leader of the council recently wrote an article in the Echo commenting on the way in which business rates are damaging the High Street. The applicant won't have to pay these and this isn't fair, added to which this location is not supported by policy;

- the stall offers something different from the surrounding businesses, and is nice and a diverse part of Cheltenham's festive offer.

Applicant's response

The applicant read out two letters, as follows:

- from a long-term resident of Cambray Place who feels that the stall is something special, a well-run family business which enhances the Christmas street scene;
- from a local sausage producer, who has been trading with the applicant's family for over 10 years. The business employs five local people, and provides hot, high-quality food for people on the move, who may not have time or money to find a seat in a café but don't want junk food.

The Chair asked that references be supplied before the meeting rather than at the meeting going forward.

Vote

1.5.1 Approve the application because Members are satisfied that the location is suitable

4 in support

1 in objection

CARRIED

The Chair informed the applicant that this will be confirmed in writing in due course.

5. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Review of Hackney Carriage Driver's licence

The Chair explained to the applicant how consideration of his application would proceed.

Officer introduction

The Licensing Team Leader explained that the applicant's hackney carriage driver's licence is due for renewal in January 2021, but CBC received a complaint on 9th January 2020, the nature of which is outlined in the background papers of the officer's report. Officers felt that this was serious enough to warrant a review. Options are set out at 1.4.1-1.4.4 in the officer report. Members were reminded that the decision as to whether the applicant is a fit and proper person to hold a hackney carriage drivers licence is based on the civil standard of proof, i.e on the balance of probabilities.

In response to Members' questions, the Licensing Team Leader confirmed:

- the first image in the background papers accompanying the officer's report shows the depth gauge, which the applicant says he did not see, above the windscreen, and was the best picture available on the night;
- two of the photos were taken on the night of the incident, the other two the morning after.

Applicant's address

The applicant stated that the job, to pick up a customer from The Merryfellow on School Road in Charlton Kings, was booked for 10.30pm. He stated that it was raining. After the pick-up, he tried to go a short-cut route and, arriving at the river, didn't see the warning sign or think the water looked dangerous. He has been using the road for 10 years, and had no problems before, and the customer did not complain about him using this shortcut route. He has never noticed the sign not allowing cars down this road, other than for access, before.

In response to Members' questions, the applicant confirmed that:

- he has been driving from 2008, and has had a hackney carriage driver's licence from October 2010;
- he has had no other similar incidents or lapses of concentration;
- he has driven the route regularly, both day and night, and not noticed the no entry sign before; most drivers take this shortcut to avoid traffic;
- he did not drive down School Road to pick up the customer; he came from a previous job in Cirencester Road;
- he knows the route well, and although there had been a lot of rain, has experienced this before and would not have deliberately put himself or his passenger in danger;
- if his passenger had been a wheelchair user, he would not have driven through the river;
- he had not noticed the danger signs, warning of fast flowing water during heavy rain;
- his passenger lives in Battledown;
- when his engine cut out in the river, he called 999; emergency services asked if he was able to get out safely – he was – and advised him therefore to call a breakdown service;
- his passenger walked home.

Member debate

Members raised the following concerns:

- the applicant, a professional driver - deemed a fit and proper person, did not see either of the two signs, and proceeded into the water, putting himself and his passenger at risk. On a dark night, in heavy rain, this is an incredibly poor decision; the right decision would have been to turn back;
- the applicant is approved to take wheelchair passengers, but should not have contemplated driving through the river, even by himself;
- the fact that other taxi drivers use the shortcut is not a defence;
- the driver should have taken the shortest, safest route, but did not do so here;

One Member stated that he would not be happy getting into the applicant's taxi at the moment, but another Member said he would, as this incident was the first mistake the applicant has made in ten years and he accepts that what he did was extremely serious. He has learnt a lesson forcefully and is present tonight as part of the learning curve. The Member would question the probability of him doing anything similar again, and would not want to deprive him of his livelihood because of one mistake. The Chair reminded Members that this is not a material consideration and cannot be taken into account when making a decision.

A Member was concerned by the applicant's comment that other drivers habitually use this route despite it being a route for access only.

Members then considered the four options available to them, as outlined in the officer report. The Chair pointed out that the committee is not here to punish the applicant, but that licensing is concerned with protecting the public. Members said they were struggling to find the most appropriate sanction; the Licensing Team Leader confirmed it is at the Committee's discretion to come up with their own resolution to fit this particular case should they see fit.

After further discussion, a Member proposed that, given the gravity of the situation, a formal written warning should be issued, to remain on the applicant's record. He also suggested the licensing officers write to hire companies and the trade association for hackney carriages to highlight the fact that this is a no-entry road and drivers should not use that route.

The Licensing Team Leader confirmed that a resolution for a written warning would need to be passed, to add this to the list of options; if agreed, it would be taken as a material consideration in any future cases involving the applicant.

Applicant's response

The applicant had no further comments to make.

Vote on resolution 1.4.1 that the applicant remains a fit and proper person to hold a Hackney Carriage Driver's licence and that no further action is required
0 in support
5 in objection
NOT CARRIED

Vote on resolution proposed by a Member, that a formal written warning be issued by the licensing authority and remain on the applicant's record .
5 in support – unanimous
CARRIED

The Chair suggested that the applicant should take this as a warning and be sure to be more careful in future. He asked that licensing officers put a notice in the Trade Times, reminding drivers that this section of School Road should not be used. The Licensing Team Leader confirmed that this will be done, adding that any enforcement action is the responsibility of the county council, not CBC.

6. APPLICATION FOR A PRIVATE HIRE DRIVER'S LICENCE

PHD licence

The Chair explained to the applicant how consideration of his application would proceed. The applicant was accompanied Mr Gordon Milne, present to act as a character witness.

Officer introduction

The Licensing Team Leader introduced the application for a private hire driver's licence. The background papers set out the applicant's convictions and endorsements, and policy requirements regarding the expected time lapse between these and the re-issuing of a licence. Members can grant the licence, if they consider the applicant to be a fit and proper person, or refuse if they do not consider this to be the case. He reminded Members that it is the council's statutory duty to only grant a licence to fit and proper people, and that the applicant still needs to undertake other assessments. He confirmed that the burden of proof, on the balance of probabilities, is on the applicant, to show that he is fit and proper to hold a licence.

Applicant's case

The applicant said that he had not had a licence since 2012. He said that since 2012 his life had fallen apart, and he was struggling to survive and live, dealing with sick parents amongst other things. He said he needs his job as a taxi driver and that he is trying to get his life back on track.

The Licensing Team Leader confirmed that the applicant has submitted a detailed written statement, which is included in the background papers, and that this should be taken into account by Members.

In response to questions from Members, the applicant confirmed that:

- he has no convictions or incidents of violence; under the influence of alcohol, he has made some embarrassing mistakes – but no violent offences and never while at work;
 - he has not sought or received any counselling for his issues; he has tried to explain his situation in four sides of paper, but it is not a simple story;
 - he believed himself to be under the limit in the incident in November 2013, having had one glass of wine; he drove one hour later, was pulled over by the police and was a fraction over the limit; after 1.5 hours at the police station, he was allowed to drive home. He realises now he made a huge mistake in driving after the glass of wine;
 - the incident in 2015 was more complicated and after drinking in a local pub, he exchanged abusive texts with his step-father following being evicted by him, which he now regrets. Rather than carry his shopping home, he decided to drive the three-minute journey, being angry and not thinking clearly. When he arrived home his step-father had reported him to the police and they were waiting to breathalyse him;
 - he understands that policy expects people to be free of drink-driving offences for five years before a licence can be re-issued, except in exceptional circumstances. He said he is still looking after his sick parents, and is permanently on call to help them. He has undertaken various temporary work, and lost a job through looking after his mother; he has no job at the moment, has just acquired a flat, and is trying to get his life back in order and move on, while looking after his parents;
 - he would not say he has a poor relationship with alcohol. The first drink-driving incident was a mistake, the second arose from a volatile relationship. He has a glass of red wine with a meal, but not every day.
- Mr Gordon Milne, former manager of A2B private hire company, used to employ the applicant, and told Members that he was aware of his family problems, but always found him to be honest and of good character, a fit and proper person to hold a licence. He was good with the public, always received good conduct reports, and only used alcohol during recreational time, never when driving

passengers. As someone with 42 years' experience in the taxi trade, would not be at the meeting tonight if he had found otherwise.

Member debate

Members raised the following issues and concerns during the debate:

- the applicant has not one but two convictions for driving under the influence of alcohol. Given the council's public safety duty and policy, which would allow him to be licensed again in May 2023, Members would feel uncomfortable granting a licence now;
- the definition of 'fit and proper' is not defined in law, but a widely-used test would be whether a person would allow a spouse, child etc to get into a vehicle with this person, is he safe and suitable to be allowed a licence?;
- the applicant has had his driving licence back for 18 months, but this is not long enough to prove that he can be trusted to drive loved ones or vulnerable members of the public;
- as the applicant has had no issues since 2015, and nothing else on his DBS regarding non-driving incidents, one Member felt he would not want the applicant to wait until 2023 to comply with policy;
- whilst having sympathy with the applicant's family situation, this is not a material in the decision as to whether or not to grant him a licence;
- Members would be happier if the applicant had sought and was receiving some help for alcohol and abusive behaviour;
- Members felt that the applicant should come back in 12 months;
- as an authority, CBC has to be assured applicants can maintain a high standard of driving and behaviour; driving with excess alcohol and malicious texting is therefore concerning, as is failure to declare a disqualification and caution;
- CBC has a duty to protect the safety of the travelling public in Cheltenham.

Applicant's response

The applicant explained that the caution for malicious communications and driving over the limit all took place on one night. He said his undeclared disqualification was 21 years ago, and he understood from a licensing officer that only more recent ones, since the grant of the first taxi licence, needed to be declared. He has no excuse for the other.

Mr Milne said there are currently several licensed drivers working in Cheltenham with drink-drive and criminal convictions, and asked if there were double standards here. He reiterated the applicant's concern for his parents.

Vote

1.4.1 to grant the applicant's Private Hire driver's licence if Members consider him to be a fit and proper person

0 in support

5 in objection

REFUSE

The Chair confirmed that the licensing committee is not minded to grant the private hire licence due to concern about the short time between convictions, and the fact that this does not comply with policy. He told the applicant that officers will confirm this in writing, and that he, the applicant, has the right to appeal to the magistrate's court, within 21 days

7. APPLICATION FOR A SEXUAL ENTERTAINMENT VENUE LICENCE

Officer introduction

The Licensing Team Leader introduced the application for the grant of a sexual entertainment licence at Club Covert, 12-14 Bath Road. The dates and hours are set out in the report, to coincide with The Festival in March 2020. The application form, site location, and all objections are included in the appendices of the officer's report. He confirmed that there has been no objection from the Chief Officer of Police, and two objections had been received from local residents. Mandatory and discretionary grounds for refusal are set out in the report.

One of the objectors stated that Club Covert is not part of Cheltenham's Night safe scheme, but this is no longer the case, and Eroticats is also an associate member. The conviction of the alcohol licence holder at Club Covert is not relevant to this application, although Members need to understand the relationship between the two, and to what extent he will be involved with the running of the sexual entertainment venue. Members may also want to consider its Public Sector Equality Duty when determining this application – guidance is set out a 7.3.3 in the officer report.

The Licensing Team Leader also reminded Members that while Club Covert currently falls just outside the area in which the council permits the licensing of SEVs, it has previously granted a licence for this location, and they should also note that policy doesn't fetter discretion. Every application must be considered on its individual merits and circumstances, but equally Members must not deviate from CBC's policy without good reason to do so.

Applicant's address

The applicant was represented by his solicitor, Mr Younis, who made the following comments:

- this is a new application from Club Covert, to operate at the times set out in the application form, for the Cheltenham Festival in March;
- the applicant has operated a SEV at The Two Pigs from 2017; he is experienced in the business – an important factor, carrying significant weight;
- Parliament made it lawful to operate SEVs as part of retail and leisure activity in 2009;
- there are two grounds for objection – mandatory and statutory – but not moral. In this case, mandatory grounds can be disregarded. Regarding discretionary grounds, Club Covert is currently just outside Cheltenham's permitted area for SEVs, but two previous clubs have been licensed at this location, and on February 11th 2020, Cheltenham Borough Council's Cabinet will consider a new policy area, which will encompass 12-14 Bath Road;
- previous decisions would suggest that these premises are deemed suitable for a SEV; it is not in a vicinity frequented by under-18s after 8.00pm, near a place of worship, school or college. The location should therefore not be a concern here;
- the fact that the police have not raised any objections or made any comments is of paramount importance, reflecting the view of the suitability of

the applicant and the proposed venue. If the police had any concerns about either, they would have raised them;

- Club Covert is now a member of the Night Safe scheme, which aims to reduce crime and anti-social behaviour; the applicant attends meetings and is actively involved;
- Cheltenham's Purple Flag status recognises its commitment to a safe and vibrant night-time economy, between 5pm and 5am, with transport, pedestrian links, well-lit streets, and an emphasis on safety. The applicant is keen that the town retains its Purple Flag status;
- regarding the question of how the applicant can be in charge of two venues at once, if the licence is granted, he will employ James Elias, an experienced manager to work with him. He has 15 years' relevant experience, has been the Chair of Night Safe, and was DPS Moomoos and Fever, used to have a SEV at Club Covert and is used to running events in Cheltenham, making him very well-qualified for the role. Mr Elias will manage the SEV, and Mr Roe will manage the bar;
- the applicant is hiring the venue for race week only, on a purely commercial basis – the bar and alcohol licence will be managed by Club Covert;
- 13-14 personnel will be employed by the applicant;
- if granted, suitable agreements will be drawn up to ensure that the applicant holds the only SEV licences in Cheltenham;
- Mr Field, mentioned in one of the objections, is not party to this application, and mention of him should be disregarded;
- Members visited the club on Monday, and the applicant has confirmed that he is happy to address any concerns they have, and abide by any conditions which may put their minds at ease;
- the number one priority is safety – anyone under the influence of alcohol or restricted substances will be refused entry;
- the club will use a chip system to pay for dances – no cash will be exchanged;
- the rooms used for dances will be secure, and CCTV will be used;
- Club Covert has its own crowd control policy, and there are rails outside to keep customers from spilling onto the road; they will be encouraged to queue at the side of the building, not to the front;
- Club Covert caters for a high number of people during normal licensing hours, and this is expected to be lower during its use as a SEV;
- anyone of legal age will be welcome, as long as they are responsible and respectful; if staff feel any guests appear likely to cause problems, they will be refused entry and this will be recorded in an appropriate log. The Club's first duty is to the dancers and the guests;
- there have been two objections to an SEV in this location, but these are subjective and prejudicial and should be disregarded; the club will open from 8.00pm, after local shops have closed, and there is no link between SEVs and brothels as suggested in one letter; it was noted that GRASAC was not in attendance;
- licensed premises allow control – inspections and conditions which allow the council and authorities to know where this entertainment is taking place; this avoids exploitation;
- the dancers' right to work will be checked – they are not coerced, and the majority are known to the applicant;
- if granted the applicant would be happy to have an anti-bribery and slavery policy if needed.
- people who are offended or feel their human rights are violated by the club can always walk an alternative route;

- the changing rooms are secure, refreshments are provided free of charge to the dancers, and members of staff will be on hand;
- the smoking area is for the dancers only, as it can only be accessed by walking past the booths. Customers will have to go outside, and there will be a handstamp for re-admission;
- when leaving the club, there will be a sign asking people to be peaceful and respectful of the neighbours;
- door staff will know their duties and keep up with cleaning up any mess, monitoring the situation at the end of the night;
- toilets are going to be reorganised, and female toilets will need to be accessed past the booths; there will be 2-3 security personnel to escort women to the toilets for their own peace of mind;
- a minibus will be provided at the end of the shift, to drive the dancers to their cars or their accommodation; door staff will walk them to their cars if close at hand;
- to sum up, the applicant is an experienced licence holder; the police have no concerns and would be present at the meeting if they did; conditions can be addressed and respected; the objections are not sustainable; the applicant is keen to support Cheltenham's Purple Flag status; the venue is currently outside CBC's policy area but this is changing next week; the venue has been licensed before; there are no establishments frequented by young people in the vicinity, and it will not open before 8.00pm; the licence gives a degree of control; the applicant will make sure all council policies are adhered to; performers are not coerced;
- by licensing these premises, the SEV will not be forced underground or behind closed doors, putting the dancers and members of the club in jeopardy, and the council will be allowed a greater degree of control.

Member debate

In response to questions from Members, the applicant and his solicitor confirmed the following:

- a chip system will be used to pay the dancers, so they will not handle cash during the evening; there will be a cap on how much cash they take away with them at the end of the night; the arrangements for their safety on leaving the club is described above;
- the applicant will not be involved with any 24-hour SEV licences at other premises in Cheltenham save for the one at the Two Pigs;
- when asked whether the applicant would also be looking to open pop-up SEVs elsewhere in Cheltenham, he said it would be difficult to confirm this until the decision re Club Covert has been made tonight; the Licensing Team Leader confirmed that this is not relevant to the application but helps to give Members an understanding;
- the applicant attends every Night Safe meeting, and Club Covert is now a member too; radios will be hired;
- the two venues will be run independently; dancers will not move between the two and will only perform in the venue to which they are assigned;
- there will be no fliers for this venue or the Two Pigs, or for the Eroticats bus;
- when Club Covert closes at 4am (due to its alcohol licence), the intention is to minibus customers who want to carry on to the Two Pigs;
- both the manager of the bar and the manager of the SEV will be on site at all times;

Following the site visit, Members raised the following issues and felt that remedial work would be needed before the SEV opens for business:

- the performers' changing rooms – lights should be in working order, no exposed wiring
- the performers will need water in their area to save them from going up and down the stairs
- the window in the changing rooms is not particularly secure
- directional signage for fire exits is needed from the public areas
- the sliding door to the roof area must be secure; no-one must access the roof area
- there is concern about the smoking area for patrons – a very small space, with a railing a few feet from the front door
- how will the queue be managed, and segregated from people going outside to smoke?
- an alternative fire escape strategy was discussed for the dance areas – how will this be managed?

The applicant and his solicitor confirmed that these concerns can be dealt with quickly before the first date offering SEV. An alternative fire evacuation can be written, but the distance for people passing through the temporary dance area will be no different from usual.

Member debate

The Chair confirmed that the moral objections cannot be considered here, and that concerns about the DPS are not material. The comments about 'recruitment opportunities' are not helpful. The second letter does not provide evidence to back its claims.

If the issues raised on the site visit – lighting, fire exit signage, access to the roof – are dealt with, he is minded to grant the licence, but asked that the regulations are modified to ensure no exchange of details includes electronic communication. He would like to see a limit on the number of people smoking outside to ensure not too many people are there causing a nuisance. On discretionary grounds, is minded to treat the map and red line as an indicative boundary rather than an absolute on given this seems reasonable as the council is proposing a change to the policy and the distance involved is very small.

On the site visit, Members heard about the checks on performers, to ensure they are who they say they are, are of age etc. He is content with this, and subject to conditions sees no reason to object.

A Member expressed concern that the narrow pavement area by the barrier could result in people spilling out onto the road. He felt it important to ensure a steady flow of people in this area, but there will be clusters of people, and it is important that others are not too intimidated and can actually walk past. He cannot support limiting the number of smokers, but if a crowd is waiting to get in and smokers are coming out, he is concerned that people will be pinned to the road.

The applicant stated that congestion outside the night club is dealt with on a regular basis, and the queue is managed round the corner. Smokers returning to the club will be treated as new arrivals and have to wait in line again. There will be a lobby kit to ensure the area is kept clean and tidy. The Licensing

Team Leader suggested that when a two-storey night club operated on the premises, there were always long queues down Vernon Place, but this is not the case – he has never seen long queues outside the Two Pigs. He cannot see any conflict in managing the queue and the smokers, and the local authority has the power to close the club should it become problematic.

A Member thanked the applicant's solicitor for his comprehensive explanation, she noted that there are no objections from the police, and the applicant is an experienced operator. She sympathised with the objectors but did not feel their comments relevant to these establishments. She said the door staff needed to be mindful of residential properties nearby and respect this, but was otherwise supportive of the application.

The Chair confirmed that the issues raised will be addressed. He said the council prefers venues with a robust SEV licence rather than properties operating under the exemption.

Right of Reply of Applicant

The applicant's solicitor confirmed that the applicant wishes to work with the council and will abide by any conditions imposed, having measures in place to adhere to them prior to 10th March to put any doubts in Members' minds to rest.

VOTE (unanimous)

Grant the application as applied for subject to the remedial works being undertaken;

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

None

David Willingham
Chairman