



**Notice of a meeting of
Licensing Sub-Committee - Miscellaneous**

**Wednesday, 6 July 2022
6.00 pm
Council Chamber - Municipal Offices**

Membership	
Councillors:	David Willingham (Chair), Angie Boyes (Vice-Chair), Barbara Clark, Diggory Seacome and Simon Wheeler
Officers:	Louis Krog, Vikki Fennell and Jason Kirkwood

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

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Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY	(Pages 3 - 4)
4.		APPLICATION FOR A HACKNEY CARRIAGE DRIVERS LICENCE.	(Pages 5 - 12)
5.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND WHICH REQUIRES A DECISION	

Contact Officer: Claire Morris, Democratic Services, 01242 264130

Email: democratic.services@cheltenham.gov.uk

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Cheltenham Borough Council

"Miscellaneous" Licensing Sub-committee – 3 July 2019

Highways Act 1980 Part VIIa Local Government (Miscellaneous Provisions) Act 1982

Application for permission to place an object on the Highway – ‘A’ Board

Report of the Senior Licensing Officer

1. Executive Summary

The Three Store based at 171 High Street has applied for a permission to display an ‘A’ board.

1.1 The item is referred to committee, as the application goes against policy to place an ‘A’ board on the highway at this location.

1.2 The Committee can:

1.2.1 Grant the application because Members are satisfied that the location is suitable, or

1.2.2 Refuse the application because it does not comply with council policy.

1.3 Summary of implications

Legal

No right of appeal.

**Contact officer: One Legal
E-mail: legalservices@teWKesbury.gov.uk
Tel no: 01684 272015**

2. Application

2.1 The Three Store is making a new application.

2.2 The consent is to display the ‘A’ board on the following days and times:

Monday	09:00 – 18:00
Tuesday	09:00 - 18:00
Wednesday	09:00 - 18:00
Thursday	09:00 - 18:00
Friday	09:00 - 18:00
Saturday	09:00 - 18:00
Sunday	None

2.3 The width of footpath available is in excess of 2 metres (13 feet).

3. Policy Principles, Aims & Objectives

3.1 The current consent does not comply with the council’s “Revised Outdoor Advertising Protocol” that

states:

No 'A' board will be approved within Conservation Areas except in the following circumstances; having regard to the position and location of the premises:

a) where those premises are located at basement or first floor level i.e. the premises has no shop-front at street level;

b) the premises are situated along a side alleyway and / or on private land which is not a public thorough fare / right of way.

3.2 The location subject to this application for an 'A' board does not comply with the council policy restrictions in that the business is located at street level with full street level frontage in the central conservation are. The policy was adopted with the consideration that a business in such circumstances is not deemed to be in need of this form of additional advertising, unless they are affected by the factors above.

4. Consultee Comments

4.1 No comments were received in relation to the application.

5. Licensing Comments

5.1 **The application goes against council policy, but there have been no objections received.**

Members must still consider the application, in light of the policy and provide reasons for their decision.

6. Officer recommendation

6.1 The officer recommendation is that this application be refused.

Reason(s): The location is not considered as disadvantaged and in need of this additional form of advertising in accordance with the restrictions set out in the Revised Outdoor Advertising Protocol.

Background Papers

Service Records

Case Officer

**Contact officer: Jason Kirkwood
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 262626**

- 3.2 The DfT standards have been set directly **Page 6** the safeguarding of the public and the potential impact of failings in this area, therefore the “importance of thoroughly considering these standards cannot be overstated.”

Fit and proper test

- 3.3 The statutory guidance defines “fit and proper” as:

“Without any prejudice, and based on the information before you, would you allow a person for whom you care, regardless of their condition, to travel alone in a vehicle driven by this person at any time of day or night?”

- 3.4 The statutory guidance goes on to say at paragraphs 5.13 and 5.14:

If, on the balance of probabilities, the answer to the question is ‘no’, the individual should not hold a licence.

Licensing authorities have to make difficult decisions but (subject to the points made in paragraph 5.4) the safeguarding of the public is paramount. All decisions on the suitability of an applicant or licensee should be made on the balance of probability. This means that **an applicant or licensee should not be ‘given the benefit of doubt’. If the committee or delegated officer is only “50/50” as to whether the applicant or licensee is ‘fit and proper’, they should not hold a licence.** The threshold used here is lower than for a criminal conviction (that being beyond reasonable doubt) and can take into consideration conduct that has not resulted in a criminal conviction. [Emphasis added]

4. Policy Considerations

- 4.1 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.
- 4.2 Each case will be decided on its own merits. The authority will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 4.3 The overriding consideration is the safety of the public. The authority 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.
- 4.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.
- 4.5 The council has adopted a local policy to reflect the manner in which it will carry out its licensing responsibilities under the hackney carriage and private hire legislation. The sub - committee must have regard to this policy in making its decision, but it may depart from it where it is considered appropriate to do so. If the sub – committee do depart from it they should provide cogent reasons for doing so.
- 4.6 The council has revised its own convictions policy at Appendix B of its Taxi Policy following the implementation of the Statutory Taxi and Private Hire Guidance, which updates and continues to reflect the council’s local policy in respect of these matters. The local policy should take precedence over the statutory guidance if and when there is a conflict between the two documents. This is because the council worked with other local authorities to ensure the statutory guidance was followed, and yet local circumstances were considered and the council’s policy in this respect reflected a harmonised and consistent Gloucestershire based approach reflecting local conditions appropriately. Details of the relevant policy extracts can be found in the background papers.

- 5.1 The licensing sub-committee must have regard to the statutory guidance and the provisions of its own policy when coming to a determination of this application.
- 5.2 The authority is under a statutory obligation to ensure that persons licensed as Hackney Carriage drivers are fit and proper people. Public safety is the authority's primary concern and therefore applicants are expected to demonstrate a high standard of driving and behaviour.
- 5.3 Members are advised that the applicant still needs to complete all of the tests, assessments and requirements to obtain a Hackney Carriage driver's licence of which one is a driving assessment. Therefore, if Members are minded to grant the application, delegated authority is requested for officers to grant the application once those matters are addressed satisfactorily, namely the following:-
- Driving assessment
 - Local Knowledge Test
 - Safeguarding training
 - Medical report
 - Receipt of an enhanced DBS certificate with no convictions, and the applicant signing up to the update service,
 - Certificate of good character
- 5.4 Members will note from the accompanying background papers at ANNEX 2 that the applicant does not satisfy the policy requirements in respect of points on his DVLA driving licence.
- 5.5 However, Members should note the initial paragraphs of Appendix B (the council's conviction policy), where it states:-

1. *This policy is intended to provide guidance on determining suitability of new applicants and existing licence holders where the applicant or licence holder has been convicted of a criminal or driving offence.*
2. *The policy lists the types of offences that may give concern to the Licensing Authority. For the more serious offences the expectation is that an application will be refused or an existing licence holder will have their licence revoked. For other offences the policy gives the times scales that it is expected will have elapsed since the conviction before an application will be granted.*
3. *The Policy states that each case will be treated on its own merits. Where an applicant or Licence Holder has an offence listed in this policy it will not necessarily mean an automatic barring or 26 revocation. However, the applicant or licence holder can expect that their application or licence will be put before a Licensing Sub-Committee for consideration who will take account of this policy. The obligation will on the applicant or licence holder to put forward reasons and/or evidence in support of their case for the Licensing Sub-Committee to consider.*
4. *If an application is refused or a licence is revoked the applicant or licence holder will have right of appeal to the Magistrate's Court. The application to the Magistrates Court should be made within 21 days of the applicant or licence holder being notified by the Licensing Authority of the decision to refuse or revoke.*

If Members are minded to grant this application contrary to the provisions of the authority's licensing policy, the sub-committee is under duty to provide clear and comprehensive reasons for doing so.

- 5.6 **Members are reminded of the council's policy in relation to motoring convictions in Appendix 1. The applicant has more than 1 minor traffic offence and 1 of his convictions was received within the last 12 months. Both of these facts go against policy.**
- 5.7 The applicant 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.
- 5.8 In considering the application on its own merits Members should have regard to the adopted Probity Guide.

Report Author

Contact officer: Jason Kirkwood
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264135

ANNEX 1

Extract from Appendix B of Taxi Policy

Motoring convictions

48. Hackney carriage and private hire drivers are professional drivers charged with the responsibility of carrying the public. It is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence would not prohibit the granting of a licence. However, applicants with multiple motoring convictions may indicate that an applicant does not exhibit the behaviours of a safe road user and one that is suitable to drive professionally.

49. For the purposes of this policy a minor traffic offence is one where the DVLA has imposed no more than 3 penalty points on the applicant's DVLA driving licence for the offence. A major conviction is one where the DVLA has imposed more than 3 penalty points on the applicant's DVLA driving licence for the offence. There is more information about endorsement codes and penalty points 32 on the Government's website. <https://www.gov.uk/penalty-points-endorsements/endorsementcodes-and-penalty-points>

50. For the purposes of this policy, a 'valid' traffic offence is the same definition as used by the DVLA. Points that stay on a DVLA licence for 4 years are 'valid' for 3 years. Points that stay on a DVLA driving licence for 11 years they are 'valid' for 10 years. There is more information on the Government's website <https://www.gov.uk/penalty-points-endorsements/how-longendorsements-stay-on-your-driving-licence>

51. Where an applicant has more than one minor traffic offence a licence would be refused whilst the relevant points remain 'valid' on their driving licence.

52. Where an applicant has a major conviction the application will be refused whilst the relevant points remain 'valid' on their driving licence.

53. Any motoring conviction while a licensed driver demonstrates that the licensee may not take their professional responsibilities seriously. However, it is accepted that offences can be committed unintentionally, and a single occurrence of a minor traffic offence may not necessitate the revocation of a taxi or private hire vehicle driver licence providing the Licensing Authority considers that the licensee remains a fit and proper person to retain a licence.

54. Where there is a second occurrence of a minor traffic offence, whilst the first minor traffic offence is valid, or a single occurrence of a major traffic offence of up to 6 points, a licence holder can agree to complete a driving assessment, at their own expense, through an approved provider, as an alternative to a review/revocation of their licence by a Licensing Sub-Committee

55. Where a licence holder has more than 6 valid penalty points for driving offences their licence will be revoked.

Drink driving/driving under the influence of drugs

56. Where an applicant has a conviction for drink driving or driving under the influence of drugs, a licence will not be granted until at least seven years have elapsed since the completion of any sentence or driving ban imposed. In the case of driving under the influence of drugs, any applicant may also have to undergo drugs testing at their own expense to demonstrate that they are not using controlled drugs. A licence holder convicted of the above will have their licence revoked

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