

Licensing Committee

Friday, 4th September, 2015
2.00 - 3.15 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Adam Lillywhite, Rob Reid, Pat Thornton, Jon Walklett and Tim Harman (Reserve)
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillors McCloskey, Regan and Flynn.

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 last meeting held on 31 July 2015 were approved and signed as a true record.

5. REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE - MR BARRY LEWIS

The Licensing Officer, Phil Cooper, introduced the report regarding the review of Mr Barry Lewis' Hackney Carriage Driver's Licence. Mr Lewis had held his licence since 2002 but on 10 August 2015 had been convicted of two offences under the Health Act 2006 of smoking in a smoke free place, namely a licensed private hire vehicle. Members were also advised that since 2008 Mr Lewis had been observed committing this offence on six occasions and details of the convictions were outlined in the background papers. Two of the offences were dealt with by way of a fixed penalty notice and Mr Lewis was prosecuted and found guilty on each of the other four occasions.

In view of this, members were advised to consider whether Mr Lewis was a fit and proper person to hold a Hackney Carriage Driver's Licence. If the Committee felt Mr Lewis was not a fit and proper person, members had the option to revoke his licence immediately in the interests of public safety.

In a reply to a question from a member, the Officer confirmed that there were no passengers in the vehicle when Mr Lewis was observed smoking.

Mr Lewis was invited to address the Committee. He told members that he had paid the two fixed penalty fines straightaway, that he no longer smoked in the

car and now used E cigarettes as he had been told to give up smoking by the hospital.

When asked by a member why there were six convictions listed in the report with fixed penalty charges, Mr Lewis replied he didn't know, he could only remember going to court twice. Mr Lewis said he admitted to two offences and that the other four were all E cigarettes and seen from a distance. He confirmed that his vehicle was open without a divide between front and rear seats. Mr Lewis, in reply to a question, suggested that E cigarettes came out in early 2008. Mr Lewis' offences related to the period April 2008 to March 2015.

The Chair reiterated to members that all six convictions were for nicotine cigarettes and the Officer reinforced this by adding, that it was a criminal offence to smoke proper cigarettes but **not** an offence to smoke E cigarettes. Thus each occasion was an offence because real cigarettes not E cigarettes were observed.

One member proposed that if the committee allowed Mr Lewis to keep his licence he should receive a written warning stating that if he was caught again smoking a real cigarette within his vehicle and convicted for the offence, that the Committee would revoke his licence.

It was agreed to have the addition to the recommendation for the licence to be permitted to continue, because the Committee thought that Mr Lewis was a fit and proper person to hold a licence but that he should receive a written warning.

Upon a vote on the amendment, it was (7 for, 1 against)

Upon a vote on the substantive, it was (6 for, 2 against)

RESOLVED THAT, Mr Barry Lewis' Hackney Carriage driver's licence be permitted to continue, because the Committee was satisfied that he was a fit and proper person to hold a licence but that he receive a written warning.

6. RENEWAL OF PRIVATE HIRE DRIVER'S LICENCE - MR MOHAMMED AKIL MIAH

To Note : This item referred to an **application** for a private hire driver's licence and not a renewal as stated in the agenda.

The Licensing Officer, Phil Cooper, introduced the report regarding an application from Mr Mohammed Akil Miah for a Private Hire Driver's Licence. Members were informed that Mr Miah had two convictions and a caution which were detailed in the background papers, along with details provided by Mr Miah during the interview and some additional information from the police

Mr Miah was invited to address the Committee. He informed members that these offences happened between 2003 and 2008 when he was young and that he was now 28, a family man and wished to change his line of work to a taxi driver so he could spend more time with his family. He said that they were mistakes he had made when he was younger, that he was not a violent person and had not been in any trouble for the past 7 years. When questioned over the

alleged use of a baseball bat, Mr Miah confirmed that he had picked up the bat from a basket in the garage and not from his car, but because the CCTV did not show him doing this and the next CCTV image showed him by his car with the bat, he said it had been only his word against the group of youths who were being racially abusive to him.

The Chairman reminded members that the policy referred to offences happening within the last 5 years as a consideration for refusal and that being a new application, any subsequent offence would come back to committee. If the committee were satisfied that Mr Miah was a fit and proper person to hold a Private Hire driver's licence, Mr Miah would still need to successfully complete all the assessments required including the Driver Vehicle Standard Agency's enhanced driving test and the Council's knowledge test and English proficiency test.

In view of the offences listed, members were asked to consider whether they were satisfied that Mr Miah was a fit and proper person to hold a Private Hire Driver's Licence.

Upon a vote, it was (7 for, 1 abstention)

RESOLVED THAT, Mr Miah's application for a Private Hire Driver's Licence be granted as the Committee considered him to be a fit and proper person to hold such a licence.

7. APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE - MR PAUL CLARKSON

The Licensing Officer, Phil Cooper, introduced the report regarding an application received from Mr Paul Clarkson for a Private Hire Vehicle Licence in respect of a Mercedes S Class vehicle. The Officer informed members that the vehicle did not comply with the Council's adopted policy as it had three seats available for passengers, whereas the policy requirement for licensed vehicles was a minimum of four passenger seats. In all other respects the vehicle complied fully with the Council's policy. Further details about the vehicle were included in the background papers. The Officer advised members to consider whether they were satisfied that there were sufficient reasons to depart from the policy and grant the licence if they felt it was suitable to be licensed as a private hire vehicle.

In response to a question from a member, the Officer said he was not aware of any other three passenger seater licensed vehicles in the Borough and that this was not because they had been refused but because they had not been requested.

The applicant Mr Clarkson addressed members and referred to the pictures and information in the papers and confirmed that he currently operated one E Class Mercedes in his business, that he was VAT registered and had a plate exemption. He stated that 95% of his work involved transporting one or two passengers and that he did not operate as a normal licensed taxi. He said that if his request for a private hire vehicle licence for a Mercedes S Class was granted then this would enhance his business and improve passenger comfort.

In reply to a question from a member, Mr Clarkson confirmed that he only has one car and that he would be swapping the make of cars, not adding an additional one.

The Chairman referred to the Officer recommendation in the report, which was welcomed by members, which recommended that there were sufficient reasons to deviate from the policy and grant the licence and he moved to vote.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, the application be approved because the Committee was satisfied that there were sufficient reasons to depart from the policy requirement in this instance.

Subsequently the Chair stated that he felt the policy on this matter needed to be re-considered.

8. LICENSING COMMITTEE RESPONSE TO CHELTENHAM BOROUGH COUNCIL'S STREET TRADING POLICY CONSULTATION

The Licensing Officer, Phil Cooper, introduced the report on the Licensing Committee's response to Cheltenham Borough Council's Street Trading Policy consultation, which had been discussed and a response formulated at the Licensing Committee's meeting on 31 July 2015. A report had been produced and circulated and notes from the meeting were included in paragraphs 4.1 and 4.2 of the report.

The Chair of the committee had asked for the following comment to be added:

- That the committee was concerned about the amount of prescription of the products to be sold in the various locations, whilst recognising the general need to avoid the sale of certain products where these locations were unsuitable.

Members were asked to ratify the notes from the previous meeting, as shown in the report and amended as above, as being their response to the current street trading consultation.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, that the comments in paragraph 4 of the report, together with the additional comment as above, be approved as the committee's response to the consultation.

9. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

RESOLVED THAT in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:

Information relating to any individual,

Information which is likely to reveal the identity of an individual,

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

10. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Members were advised that they had the following recommendations to vote on:

Whether the licence holder's Hackney Carriage driver's licence be continued with no further action, because the Committee was satisfied he was a fit and proper person to hold such a licence; or

Whether licence holder's Hackney Carriage driver's licence be revoked as the Committee considered him not a fit and proper person to hold such a licence.

Upon a vote, it was (8 for, 0 against)

RESOLVED THAT, the licence holder's Hackney Carriage driver's licence be continued with no further action, as the Committee was satisfied that he was a fit and proper person to hold such a licence.

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

None

12. DATE OF NEXT MEETING

2 October 2015

Roger Whyborn
Chairman

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