

Licensing Committee

Friday, 2nd October, 2015
2.00 - 4.00 pm

Attendees	
Councillors:	Roger Whyborn (Chair), Andrew Chard, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Jon Walklett, Tim Harman (Reserve) and Helena McCloskey
Also in attendance:	Andy Fox and Peter Lewis

Minutes

1. APOLOGIES

Apologies had been received from Councillor Thornton and Councillor Diggory Seacome and Councillor Tim Harman was attending as his substitute.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. PUBLIC QUESTIONS

None received.

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 4 September 2015 were approved and signed as a true record.

5. LICENSING COMMITTEE RESPONSE TO ANIMAL LICENSING CONDITIONS - CONSULTATION

The Senior Environmental Health Officer, Sadie Hawson, introduced the report regarding the Licensing Committee response to the consultation on Animal Licensing Conditions. Under the Council's Constitution the Licensing Committee are a consultee to Cabinet on the adoption of new animal licence conditions for animal boarding establishments, pet vending and dog breeding. Renewal of the animal boarding conditions includes separate commercial kennels, catteries and home boarding conditions alongside pet vending conditions and new dog breeding conditions. An eight week consultation period took place between 14 August and 9 October 2015.

The members of the Licensing Committee had heard a presentation on potential contentious issues on 4 September following the Licensing Committee meeting and they met subsequently to discuss their concerns and consider a response. Licensing Committee Members were emailed details regarding a new drafted condition which Members were now being asked to approve as part of their response to the consultation.

In response to questions from Members, the officer confirmed that there was a regular inspection of all dog boarding kennels and all the ones registered in

Cheltenham did have outside facilities. The inspection was currently done on an annual basis but there was the intention to make an additional unannounced inspection once a year. A member asked whether daily exercise was a requirement for dogs in kennels. The officer referred members to paragraph 4.17 in the report which highlighted that the wording in the additional condition did not specify "daily" as different dogs would have different requirements. Although it was envisaged that the exercise probably would be daily there may be exceptions in the case of bad weather or smaller dogs for example. She added that the addition of "daily" may make the condition less enforceable.

After further discussion Members felt it was important that the word was incorporated in some way and upon a vote it was unanimously:

RESOLVED THAT the adoption in principle of the model conditions by Cabinet be supported subject to the following being included into the "CBC Licence Conditions for Dog Boarding – Kennels" following condition 4.2.6 (under 'Kennel size, layout and exercise facilities'):

"Suitable and adequate exercise in an outdoor environment (separate to the kennel areas) must be ensured for all boarded dogs that require it, to ensure a dog's daily environmental and normal behaviour needs are met."

6. APPLICATION FOR PERMISSION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY

Councillor Adam Lillywhite declared an interest in this item as he knew the applicant personally and left the room for the duration of this item.

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application that had been received from Rajinder Singh Boyal in respect of 81 The Prom, 81 Promenade, Cheltenham GL50 1PJ. The applicant was seeking permission to place 3 tables and 5 chairs on the highway outside the premises from 08:00 to 22:00 hrs, every day. Appendix A showed photographs of the furniture and a plan showing how the tables and chairs will be positioned and Appendix B showed the location of the premises.

The officer circulated a late amendment which he had received from the applicant which responded to some of the objections and reduced the request to 2 tables and 4 chairs and suggested there could be flexibility on the types of chairs. Members were given a few minutes to read the details. The officer confirmed that the objectors had not been advised of the amended proposals as it had been received too late.

The chair invited questions to the officer from members. One member referred to examples in the document circulated where the space between the barrier and the pavement is less than 1.8m and asked whether these premises had been given exempt status. The officer referred members to paragraph 6.2 in the report which highlighted that there was not a minimum distance specified in the policy. The committee would normally expect a minimum of 1.8 m but sometimes would accept less depending on the circumstances.

The officer confirmed that the enforcement officers went out on a regular basis to check that the limits agreed were being adhered to.

The chair invited the applicant to speak in support of their application.

Mr Boyal highlighted that Montpellier had very similar architectural features in common with the Promenade and in the light of the objections to his application he had made a study of other properties and taken photographs which he had included in the document circulated to members today. He had found a great variety of the types of chairs and barriers used. He explained to Members that he had spent a considerable amount of money improving the property and restoring many of the original features inside with the advice of the council's conservation officers. In his opinion barriers were important but if the committee didn't want them he would be happy to leave them out. It was his understanding that there had been tables and chairs outside the property before so they must have been given permission at some stage. The applicant suggested that because of the location of his business he needed more help than businesses in Montpellier to promote his business to passers by. He had already received compliments and prizes for the floral displays he had put up outside the building.

In response to questions from Members he confirmed that staff would be coming up the stairs with hot food and therefore if barriers were there, there was no risk of the staff coming into contact with the public.

In the discussion that followed a member suggested that the council should be encouraging cafe culture and generally diners now expected to see outside facilities. Cars parked in the inner promenade spoil the view much more so they would prefer to get rid of them if possible. Another member supported the view that the committee should be as supportive as possible to businesses but they felt that Montpellier was totally different to the Promenade. The Promenade with its clean lines was an essential tourist attraction to the town and nothing should be done which could detract from this view.

A member suggested it would be difficult to make a decision because the objectors had had no opportunity to make a response to the amendments circulated. The chair suggested that the objections had been related to the principles of tables and chairs on the pavement in this location and therefore they would not be likely to change their view. Similarly the Highways Authority had made no objections to the original application and therefore would be unlikely to make any objections to this revised plan.

The chair advised members that he intended to take a straw poll of members to establish who was in favour of the principle of tables and chairs in this location. A vote established that the committee were split 4:4.

The chair then proposed an amendment that a barrier at 1.8 M was inserted at a low height in front of the tables as opposed to only having barriers at the end of the tables:

Upon a vote this was LOST
Voting (For 2, Against 5 with 1 abstention)

The chair proposed an amendment that the no of chairs was reduced to two tables and four chairs as opposed to the original application of three tables and five chairs.

Upon a vote this was CARRIED
Voting (For 6, Against 1 with 1 abstention)

Members agreed that if they supported the application, they would be happy to delegate discussions on the choice of furniture type with the applicant to officers.

Members then voted on the substantive motion as amended set out in 1.4.1 of the report. Upon a vote it was 4 for, 4 against and with the Chair's casting vote it was

RESOLVED THAT, the application in respect of 81 The Prom, 81 Promenade, Cheltenham, for 2 tables and 4 chairs to be on the highway outside the premises with no barrier in front of the tables but only at each end from 08:00 to 22.00 every day be approved, as members felt the application was compatible with the current Street Scene Policy.

7. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox, introduced the report regarding a review of the Hackney Carriage driver's licence HCD757 for Mr Neil Spencer which was due for renewal on 4 February 2018.

The report explained that the council had received a number of complaints from the public about Mr Spencer's behaviour. In light of this, officers had taken the view that his Hackney Carriage driver's licence should be brought before the committee for a review.

The details and nature of these complaints were outlined in the attached background papers. He referred members to the witness statement of Councillor Max Wilkinson and advised that he was not a community protection officer as stated in the paperwork. The officer explained that Mr Spencer had received a verbal warning after the first occurrence, a written warning after the second occurrence and advised that any further incident would be brought before the committee. The officer also circulated to members a copy of an e-mail he had received from Inspector Tim Waterhouse of the Gloucestershire Constabulary who had written in support of Mr Spencer. Members were given time to read the e-mail.

The chair invited the applicant to speak in support of his renewal.

Mr Spencer said that he had never received any written or verbal warning and it had been a case of no further action on the first incident. As he went on to give details of the incident it became clear that this did not relate to any of the previous incidents set out in the background papers. Mr Spencer maintained that he had not received a copy of the background papers but only the agenda papers with a covering letter. Mr Spencer also advised the committee that he had suffered a recent bereavement of a close family member and he was visibly upset.

The legal officer advised that it was very important that Mr Spencer had access to all the relevant papers which the committee were considering.

Upon a vote the committee apologised to Mr Spencer if that was the case and unanimously

Resolved that consideration of the application for Mr Spencer's Hackney Carriage driver's licence be deferred in order to him to consider all the necessary paperwork.

After the applicant had left, the Senior Licensing Officer, assured members that all the necessary background papers had been sent to Mr Spencer. In the circumstances he would arrange to meet with him before it was brought back to committee.

8. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A BOARD

The Senior Licensing Officer, Andy Fox, introduced the report regarding an application from Mr Raja Beirouti to place an A-board on the highway to promote his photographic store which is located at 210 High Street, Cheltenham, GL50 3HF.

The proposed location of the A-board was on the High Street Adjacent to the frontage of the store shown at Appendix A. It was intended that the A-board be in position from Monday to Saturday between the hours of 09:00 – 17:30.

An image of the A-board was attached at Appendix B and the applicant had also submitted a letter in support of his application and this was shown as Appendix C and photographs as Appendix D.

There were no questions for the officer and the applicant was not present at the meeting.

The chair highlighted the extent of the current work on the adjoining property at Patisserie Valerie and suggested if they were to grant permission for the A-board it should be deferred until this work was finished. Another member had a contrary view suggesting that the A-board should be permitted for a limited period to compensate for any lack of business whilst work was underway next door.

In the discussion that followed, members did not consider that the photos supplied supported the applicant's case for an A-board as the shopfront was very visible and already contained large advertisements. They suggested that there could be other possible reasons for the reductions in business reported by the applicant particularly the move to Digital photography. They noted the licensing officer's comments in section 5 of the report and did not see any reason for deviating from the current policy.

Upon a vote it was

RESOLVED THAT

The application be refused because Members are not satisfied that the A-board complies with the Council's adopted policy in respect of objects placed on the highway.

Voting For 6, Against 1 and 1 abstention.

9. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Senior Licensing Officer, Andy Fox introduced the report regarding a review of the Hackney Carriage driver's licence HCD085 for Mr Rai Green which is due for renewal on 30 June 2015. He clarified that this renewal was still progressing and Mr Rai was still continuing to drive in the meantime. The report explained that on Tuesday 8th September, Mr Rai notified the council, by email to the Licensing and Business Support Manager that he had been charged with a number of offences. The details of the offences are outlined in the background papers. Mr Rai did on the second submission of his renewal application declare that he had a court hearing pending. In light of this the Licensing Officers have taken the view that Members of Committee should be aware of the nature of the charges and determine whether they judged Mr Rai to be a fit and proper person to hold a Hackney Carriage driver's licence. The officer advised members that paragraph 4.2 had been included in error.

The chair invited the applicant to speak in support of this review.

Mr Rai explained that he was a third-year student in the final year of his degree. He had sent an e-mail to the housing board on October 2013 to say he had stopped working but after a couple of months he was pressurised for payments on his car rental and insurance and started working at weekends only. He acknowledged that he should have informed housing benefits. He maintained that he had not made any profit during the period and it had been his understanding that he did not need to declare it in those circumstances. He had been fined £820 by the court. He was not currently receiving any benefits.

A member asked for clarification on the type of work he was doing for leisure@. The applicant advised he was a qualified sports instructor and had been earning 25 to £40 a session but no more than £300 per month in total. He was not paid in cash.

In summing up he advised the committee that he had two children and another one on the way and his taxi driving was his bread-and-butter and he urged the committee to give him one last chance and assured them that they would not see him again.

The committee retired to consider their verdict and on their return the chair explained their rationale. They were mindful of these circumstances and were of the view that if they agreed to the applicant keeping his licence they would not see him again before this committee. They were confident that the public would be honestly charged for their taxi journeys and therefore they were minded to treat this case leniently.

Upon a vote it was unanimously

RESOLVED THAT:

Mr Rai's Hackney Carriage driver's licence be continued with no further action, because the Committee is satisfied that Mr Aditya Rai is a fit and proper person to hold such a licence.

10. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

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.

11. EXEMPT MINUTES

The minutes of the last meeting held on 4 September 2015 were approved and signed as a true record.

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

There was no urgent business.

13. DATE OF NEXT MEETING

The date of the next meeting was 6 November 2015.

Roger Whyborn
Chairman