

Licensing Committee

Monday, 10th July, 2017
6.00 - 7.05 pm

Attendees	
Councillors:	David Willingham (Vice-Chair, in the Chair), Mike Collins, Adam Lillywhite, Paul McCloskey, Diggory Seacome, Max Wilkinson and Pat Thornton
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

Apologies were received from Councillors Flynn, Harman and Parsons.

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF LAST MEETING

The minutes of the last meeting held on 31 May 2017 were approved and signed as a true record.

Matters Arising

A member raised the matter of what could be done to prevent a taxi driver who had had his licence revoked by this committee, being able to continue to work as a taxi driver for a neighbouring authority which would inevitably mean him coming into the Borough of Cheltenham, particularly when anger management problems were clearly an issue. The member also asked whether the taxi driver in question had appealed.

The Legal Officer replied that he had not appealed, as the time had now expired and probably because he was still able to drive in a neighbouring authority.

The Chair stated that cross boundary issues were ubiquitous. However, it was not something that could be solved by this Council as it was down to the law.

In answer to Members' questions the Licensing Officer confirmed that a taxi driver or private hire driver may work for more than one company and that vehicles can pick up passengers outside their 'home' area if the journey is legitimately pre-booked. Cheltenham Borough Council's taxi licensing policy only applies to the drivers, vehicles and operators licensed by it. He said that the cross-boundary issue is a common problem for towns with more prosperous night time economies, where drivers from areas where it might be easier to get a licence come into town for work. He said that Hackney Carriages can use

designated taxi ranks and be flagged down, but only in the area where they are licensed, however they can do pre-booked journeys anywhere. Private hire cannot use taxi ranks, cannot be flagged down and must be pre-booked through an operator licensed in the same area as the vehicle and driver, but the pre-booked journey may be outside their 'home' area.

The Licensing Officer continued that hackney carriage proprietors in Cheltenham are required to sign a declaration stating they intend to mainly operate in Cheltenham, but that it would be up to other licensing authorities to introduce a similar requirement in their areas.

The Legal Officer explained that Gloucester City Council runs an internal penalty point system whereby once a driver had accumulated 12 penalty points they were brought before a Sub-Committee to determine whether they were still a fit and proper person to hold a licence.

In conclusion the Licensing Officer told members that partnership meetings are held with licensing officers in neighbouring districts where issues of this nature are discussed, but that all districts have different opinions, policies, priorities and resources.

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

The Licensing Officer, Phil Cooper, introduced the report regarding an application from Costa Limited to place an advertising board on the highway outside Costa Coffee at 118-120 High Street, Cheltenham. The A board would be displayed from 7am to 7pm Monday to Saturday and from 9am to 5pm on Sunday and would measure 1082mm x 762mm. No objections had been received, however the application does not comply with Council policy on the basis that the premises has ground level street frontage on Cambray Place and the High Street. The Officer informed members that the policy states that A boards in the conservation area will only be approved for premises that are disadvantaged due to being in a basement or along a side alleyway and therefore with no street frontage. Members were also advised that there is already an approved A board adjacent to this location, which has been in place for several years due to those premises being in a basement and having no shop frontage at street level.

A picture of the proposed A board was at Appendix A, with a plan of the proposed location at Appendix B.

The Officer advised members that having regard to the facts, they should decide whether to grant permission if they were satisfied that there were sufficient grounds to depart from policy or to refuse permission as the application did not comply with the adopted policy.

The applicant had been invited to the meeting but did not attend.

In response to questions from members, the Officer confirmed that the applicant had not contacted the Licensing Office to discuss signage on the building prior to the application. When asked about the signage on the building itself, the Officer advised that signage is a planning rather than licensing matter, but if the building is listed there may be limitations on signage. However, he confirmed

that Costa did have permission for tables and chairs outside the premises in Cambray Place which had complied with policy and which had barriers around them with the Costa branding on them. The Officer was advised by several members that the barriers had not been in place when they had passed by and the Officer said that he would deal with that as an enforcement matter.

One member stated that with the presence of barriers with Costa emblazoned on them and with the current signage that the brand was well known enough. Another member reported that the Costa signage could be seen from the start of the pedestrianised area and that as the application was not compliant with policy he could see no reason to vary from the policy.

There being no further comments, the Chair moved to vote on 1.6.2 of the report being to refuse the application.

Upon a vote it was unanimous, 7 for, 0 against.

RESOLVED THAT, Costa Limited's application for permission to place an A board on the highway outside the premises at 118-120 High Street, Cheltenham, be refused, as it did not comply with the provisions of the street scene policy.

6. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer, Phil Cooper, introduced the report regarding a review of Mr Wahidur Osmani's Hackney Carriage Driver's Licence HCD175. Mr Osmani had held his taxi driver's licence in Cheltenham since 2015, with it being due for renewal on 25 February 2019. On 2 May 2017 a complaint was made to the Council relating to Mr Osmani, who had refused to take a passenger who was accompanied by a dog. Mr Osmani reported the incident to the Licensing team, however the complainant's version of events differed from Mr Osmani's in that the complainant maintained that Mr Osmani knew the dog was an assistance dog. The complaint and Mr Osmani's explanation of events were contained in the background papers. The Officer circulated a letter of support from Cheltenham Borough Homes which provided further information about a separate incident involving a dog and relating to Mr Osmani and his family and which might therefore be relevant.

The Officer continued that although an offence under the Equalities Act had been alleged, the Licensing Manager had decided not to prosecute but to refer the matter to committee for members to consider whether Mr Osmani was a fit and proper person to hold a Hackney Carriage Driver's licence. Members were advised that they could revoke the licence, take no further action or issue Mr Osmani with a written warning.

In response to questions from members, the Officer confirmed that the Equalities Act 2010 places a statutory duty on licensed drivers to carry assistance dogs with no extra charge. However the transport of other pets is at the driver's discretion and the driver can make a charge. The Officer also clarified when asked that religious reasons are not legitimate grounds for refusing to carry an assistance dog. The only legitimate reason for a taxi driver refusing to take a passenger with an assistance dog is on medical grounds, in which case the driver can apply for a certificate of exemption but Cheltenham does not have any drivers holding such a certificate.

There being no further questions to the Officer, the Chair invited Mr Osmani and his representative Mr Mani Masih to address the committee. Mr Masih informed members that Mr Osmani admitted that the incident had taken place but not as the version of events stated. He explained that Mr Osmani was on the telephone to his wife who was dealing with a racist incident at home, when he was approached and asked to take a passenger with a dog. He refused and suggested they ask the car behind as it was a wheelchair access taxi and thus a bigger car. Mr Osmani admitted that he was not really paying attention as he was more concerned for his wife and that he had not realised that the passenger was visually impaired as he himself had not approached his taxi. When asked by the passenger why he would not take the dog, Mr Osmani found himself saying because I am a Muslim, something for which he apologises. Mr Masih continued, informing members that Mr Osmani had been a taxi driver since 2015 and knew this was not good customer service and that he should have asked if the dog was an assistance dog. Mr Osmani did not realise this until the taxi driver behind him questioned why he had not taken the fare. He stated that he had taken dogs before and had done so since. Mr Masih informed members that Mr Osmani was himself a victim of discrimination and that the letter of support from Cheltenham Borough Homes outlined the problems his family were encountering at home, which did involve a dog. Mr Osmani did not recall the complainant threatening to call the Police, as he would then have taken more notice as the Asian culture are afraid of the Police. Realising that there might be a complaint made against him, Mr Osmani took steps to report the incident to the council and to rectify the situation and to express his apology to this person.

In reply to questions from members, Mr Osmani:

- Stated he had not seen the dog or its harness. It was dark, about 11.30/11.45 at night and the person who approached him from the group of about 5 people did not have the dog with them.
- Admitted he was distracted on the phone to his wife and realised that he should have asked if it was a guide dog, as he knew it was law to take assistance dogs, even in Islam law it was okay to take guide dogs.
- Confirmed that he would not say 'I'm a Muslim' again as an excuse to refuse a fare, or refuse to take dogs and stated that he does have regular customers with dogs.
- Stated that he knew his action had not been professional and said that he had been running a restaurant for 6 years and therefore knew how essential customer service was.

Members felt that it was not professional to be at the front of the taxi rank and on a mobile phone and suggested that in future he should leave the rank and drive to a different location to take calls of a personal nature.

Members empathised with Mr Osmani regarding the racist threats he was having involving knives, petrol bombs and a bull mastiff type dog and noted the letter of support regarding Mr Osmani and his family from the Officer at Cheltenham Borough Homes. A member asked if the issue had been resolved as the case had been adjourned until late July for sentencing and the Legal Officer replied that he must have pleaded guilty for the case to have gone through so quickly.

It was generally felt by members that there was no ill-will meant by Mr Osmani and that he was clearly trying to deal with a difficult situation at home, however good customer service, regulated phone use and checking whether a dog was an assistance dog, were all qualities required of a fit and proper taxi driver. The Chair reminded members that this was a serious offence in law and that if Mr Osmani had been the last taxi available that night, the customer would have been more at risk. The Chair expressed his opinion that a written warning advising on customer service regarding assistance dogs and appropriate phone use, might be the appropriate course of action.

In summing up, the applicant stated that it had not been a deliberate act and that if he had known it was a guide dog he would not have refused the fare. He said he understood the complainant's reasons and wanted to apologise from the bottom of his heart to this person.

There being no further comments, the Chair moved to vote on 1.4.2 of the report being to continue the licence but with a written warning.

Upon a vote it was unanimous, 7 for, 0 against.

RESOLVED THAT, Mr Wahidur Osmani's Hackney Carriage Driver's Licence be continued but that he be issued with a written warning stating that if in future he refused to take an assistance dog he would be charged with a criminal offence.

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

None

8. DATE OF NEXT MEETING

Wednesday 2 August 2017 at 6pm

Chairman

