

Licensing Sub-Committee - Miscellaneous

Wednesday, 4th October, 2017

6.00 - 7.35 pm

Attendees	
Councillors:	David Willingham (Chair), Adam Lillywhite, Dennis Parsons (Vice-Chair), Diggory Seacome and Pat Thornton
Also in attendance:	Vikki Fennell and Phil Cooper

Minutes

1. APOLOGIES

None.

2. DECLARATIONS OF INTEREST

There were none.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting were approved and signed as a correct record.

A Member asked whether Mr Velez had discussed with Licensing officers where would be a more suitable location. In response the Licensing Officer confirmed that he had provided him with his contact details but Mr Velez had not been in contact.

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

The Licensing Officer, Phil Cooper, introduced the report regarding an application from Mr David Orme to place 2 tables and 4 chairs on the highway outside The Find, 20 Regent Street, Cheltenham, Gloucestershire, GL50 1HE. The tables and chairs would be placed on the highway at the following times :

Monday	08:00 - 20:00
Tuesday	08:00 - 20:00
Wednesday	08:00 - 20:00
Thursday	08:00 - 20:00
Friday	08:00 - 22:00
Saturday	09:00 - 22:00
Sunday	10:00 - 22:00

A picture of the proposed furniture was attached at Appendix A, a site location plan at Appendix B and hand drawn plan to illustrate measurements was attached at Appendix C. The Licensing Officer reported that whilst there had been no objections during the consultation the application was being referred to committee as it did not comply with the council's policy on objects on the highway. This was due to the fact that the applicants had indicated that they did not intend to have barriers separating the furniture from the rest of the highway,

which was a policy requirement. He explained that the council's standard recommendation was that any objects on the highway should leave a minimum distance of 1.8m to allow for pedestrian access. In this case the distance between the tables and chairs and the kerbside was 1.8m without the addition of barriers.

The Licensing Officer added that neighbouring premises also operated without using barriers as their applications were determined prior to the current policy being in place. Current applications were examined on a case by case basis. The Officer advised members that having regard to the facts, Members should decide whether to grant the consent 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 current Street Scene Policy.

In response to questions from Members the Licensing Officer confirmed that Kibousushi the neighbouring establishment had inherited permission for tables and chairs from the previous business. Renewal applications would not normally be brought to committee unless complaints had been received. It was only new applications which were not consistent with policy which were brought to committee.

The applicant, Mr David Orme, was invited to address the committee. He explained that without barriers there would be compliance with the minimum 1.8m distance required. He had chosen tables which were as small as possible and sturdy so they could withstand the wind. He believed that barriers were not necessary and would potentially be a trip hazard and blow over in the wind. They would also be unattractive and not in keeping with the listed building in the conservation area. The outdoor seating area was small and understated but would promote the café culture in the town. Signage was also conservative. To address any concerns about encroachment on the highway he proposed to observe what worked well both practically and in the regency setting. He had met with the Licensing Officer to see if there was an acceptable way and the application before Members represented the best option.

In reply to questions from Members Mr Orme said the chairs were sturdy and of a standard size and in keeping with the regency heritage building. In response to Members the Licensing Officer confirmed that the main issue with the chairs was with regard to the potential obstruction of the highway although the plan showed there was still 1.8m left to pass.

When asked how he intended to manage the furniture so as not to cause an obstruction Mr Orme stated that staff would be out regularly clearing the tables and removing any litter. As the premises had a bay window it was possible to see out on to the street from the counter so staff could monitor the situation. There was a drop kerb nearby and he was aware of the inconvenience it would cause should the 1.8m distance not be adhered to. He certainly would not wish to damage the reputation of his business by not operating in accordance with the requirements. He gave his personal assurance that the area would be kept clear.

With regard to the entrance to the basement of the 21 Club he confirmed that during most of The Find's trading hours the club would be closed and the gate padlocked. With his proposed seating plan the gateway would not be blocked in any event. He accepted that people did move tables and chairs to

accommodate their groups but undertook to monitor this so as not to encroach on the highway. With regard to smoking staff were trained to politely but firmly talk to customers and they would do this with customers who moved tables and chairs which blocked the highway.

Mr Orme confirmed that there would be waitress service on Saturdays and Sundays but not at quieter times. The table and chairs would be brought in every evening.

He believed his café, which was based on quality, would enhance the town centre and its café culture. He understood the concerns of not having barriers but hoped Members were reassured by his commitment to police the area.

During the debate that followed Members made the following points:

A Member felt that permitting applications which did not comply with the council's policy on objects on the highway was making a mockery of the policy. Everyone should be treated the same and the policy should be enforced as pedestrians were likely to be forced on to the road due to increasing encroachment on to the pavement. It was questioned how fair treatment could be given to all when those who had been granted consent 10 years ago did not have to comply with current policy.

The Chair stated that the policy represented guidance and if what was proposed was within the law and reasonable and proportionate Members had discretion to grant consent. Each application should be determined on its own merits and in this case there were grounds to vary from the policy without undermining the policy or the committee. Having looked at what other tables and chairs were on the highway in that street the proposed application was small scale. It was acknowledged that chairs would be moved by customers but the applicant had confirmed that it would not be long before they were moved back. If the applicant did not manage the operation properly then the licensing team would receive complaints. He felt it would be unreasonable to refuse consent as barriers would make the operation more challenging.

Members expressed concern that if this was approved then it called in to question the council's policy and that something permitted 10 years ago was still binding now. To that end they requested that a review of the policy be arranged.

The Chair emphasised that the committee had the discretion to vary from the policy which would not set a legal precedent and would not be bound in the future

When asked the view of the licensing team the Licensing Officer stated that the tables and chairs policy was reviewed every three years and it was on the work plan for the end of this year or the beginning of next. In response to a question the Licensing Officer confirmed that any permission the committee granted could be called in for review by the committee at any time. It was important that Members focussed on this application on its own merits.

There being no further comments, the Chair moved to vote on 1.6.1 being to grant the consent.

Upon a vote it was (3 for 2 against)

RESOLVED THAT

Mr David Orme's application for permission to place 2 tables and 4 chairs on the highway outside The Find, 20 Regent Street, Cheltenham, be granted because Members were satisfied that there were sufficient grounds to depart from the policy in this instance

5. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer, Phil Cooper, introduced the report regarding a review of Mr Arsalan Khan Maroofkhil's hackney carriage driver's licence HCD 127. Mr Maroofkhil had held his taxi driver's licence in Cheltenham since 2015 and it was due for renewal on 15 January 2018.

A complaint had been made against Mr Maroofkhil to the council's licensing team. The complainant was interviewed and provided dashcam footage of the incident. The complaint concerned a stationary taxi that was parked on double yellow lines causing an obstruction in the road. As he passed the complainant spoke to the driver of the taxi about his parking and suggested he find somewhere better to park. The complainant alleged that the driver of the taxi was verbally abusive in reply. The Licensing Officer confirmed that no other complaints had been made against Mr Maroofkhil. He explained that taxi drivers were covered by a code of good conduct and should avoid the use of bad language even when provoked.

The Licensing Officer played the dashcam footage of the incident supplied by the complainant.

Mr Maroofkhil was then invited to address the committee. He explained that he had been flagged down by a man in order to help an old lady with her shopping. He had parked on the pavement but had ensured that vehicles would be able to pass. He could not exactly remember what he had said to the driver of the van but had told him that he was waiting for the old lady to come out with her shopping and would then move.

In response to Members' questions Mr Maroofkhil said he did not have a passenger when the car was parked. He was flagged down so stopped. The passenger did not hear what was said as she was in the shop at the time. Mr Maroofkhil was asked several times by Members as to whether, having seen and heard the dashcam footage, he remembered what he had said to the driver. He replied that he had been in a rush to move his car and could not remember what he had said.

Members were advised that they should consider on the balance of probabilities as to whether Mr Maroofkhil had verbally abused the complainant. Upon request the Licensing Officer replayed the dashcam footage.

Members were then reminded by the Chair that they were there to determine whether they were satisfied that Mr Maroofkhil was a fit and proper person to hold a Hackney Carriage Driver's Licence with the overriding consideration being the safety of the public.

A Member asked the Licensing Officer whether it would be appropriate to require Mr Maroofkhil to take a driving fitness test. The Licensing Officer stated

that this would be an option had Mr Maroofkhil been driving at the time but the complaint concerned behaviour and language rather than his driving ability.

During the debate Members regretted that Mr Maroofkhil would not admit and apologise for swearing. They recognised that he must have said it as a reflex action and was a result of the circumstances he found himself in. Revoking his licence would be in their view disproportionate as this was not an issue of public safety. He had been compliant in being flagged down. However Members felt it appropriate to issue Mr Maroofkhil with a written warning which seemed to be a reasonable, proportionate thing to do. This would be kept on the driver's record. The fact that the van driver had taken the time to report this to the Licensing Team and sign a witness statement suggested that his behaviour had not been appropriate.

A Member asked whether it would be appropriate to require Mr Maroofkhil to retake an assessment in relation to his behaviour with passengers as it was important to reinforce the standard of behaviour expected from taxi drivers licensed in the borough. The Licensing Officer said whilst there were established tests for determining whether drivers are fit and proper, such as a criminal record check, medical assessment, knowledge test, driving assessment and English proficiency test, there was no test for basic behaviour.

Members discussed and voted unanimously to amend 1.4.1 to include issuing a written warning to Mr Maroofkhil.

Upon a vote it was unanimous 5 for, 0 against

RESOLVED THAT

Mr Arsalan Maroofkhil's hackney carriage driver's licence be continued with the addition of a strongly worded warning letter because the sub-committee was satisfied that Mr Maroofkhil was a fit and proper person to hold such a licence.

6. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer, Phil Cooper, introduced the report regarding a review of the private hire driver's licence of Mr Mansour Mosayeb Khozani-PHD068 which was due for renewal on 16 February 2020. Mr Khozani had a recent conviction having pled for hire without a licence on 15 March 2017 during the Cheltenham Festival. The incident was reported and Mr Khozani entered guilty pleas by post on the charges of plying for hire (without the licence for doing so) and driving without insurance. He was fined £200 for plying for hire, £700 for driving without insurance and received 6 penalty points as well as being ordered to pay costs and a victim surcharge. Mr Khozani was a relatively new driver and as part of his licence application process he undertook a written test to assess his knowledge of among other subjects, the rules and laws relating to being a private hire driver. As part of that test, which Mr Khozani took less than a month before committing the offence, he confirmed that he understood that private hire vehicles must be pre-booked through an operator. There had been no other complaints against Mr Khozani.

Mr Khozani was accompanied at the meeting by Mr Yavari, his friend and former employer, a Gloucestershire businessman, who was there to provide a character reference for Mr Khozani. Mr Khozani was invited to address the

committee. He said he had made a mistake and very much regretted his action. He had been found guilty in court and would pay the fine. He promised this action would not be repeated. He emphasised that he was respectful to his customers and the community.

In response to questions from Members Mr Khozani :

- Said he did not realise that he had invalidated his insurance by accepting the hire. He was new in the job and admitted he had not thoroughly read the terms and conditions. He regretted his actions.
- He was new to taxi driving. Prior to this occupation he had worked in kitchens and takeaways since arriving in the country in 2001
- He acknowledged that he had been stupid and greedy in picking the officers up. He apologised for the mistake he had made.

Mr Khozani's referee Mr Yavari said he had known Mr Khozani for 10 years as he had worked for him. He trusted him and said Mr Khozani was a man of good character. He fully supported the fact that he was a fit and proper person.

In response to a question the Licensing Officer confirmed that the licensing team had become aware of the issue on the night the offence took place and had subsequently prosecuted Mr Khozani.

The following points were raised during the debate :

- Members felt Mr Khozani had been heavily punished already by the Court. Their role was to determine whether he was deemed to be a fit and proper person. He had exposed passengers to risk in terms of driving without valid insurance when he plied for hire. They were hopeful that his experience through the Courts had chastened him enough to prevent him repeating the mistake. It was vital that he took seriously his position of driving the public without risk.
- Members proposed an amendment to resolution 1.3.1 to include instructing officers to issue a warning letter to remain on file. Members unanimously supported this amendment.

Upon a vote it was unanimous, 5 for, 0 against

RESOLVED THAT

Mr Khozani's private hire driver's licence be continued with the addition of a written warning because the sub-committee was satisfied that Mr Khozani was a fit and proper person to hold such a licence.

7. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE ITEM WITHDRAWN.

David Willingham

Chairman

This page is intentionally left blank