

Licensing Sub-Committee - Miscellaneous

Wednesday, 6th December, 2017
7.00 - 10.30 pm

Attendees	
Councillors:	David Willingham (Chair), Adam Lillywhite, Dennis Parsons, Diggory Seacome and Pat Thornton

Minutes

1. APOLOGIES

There were no apologies.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 1st November 2017 were approved and signed as a correct record.

4. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer, Mr Phil Cooper introduced the report and explained to the Committee that Mr Ursell had made an application for a street trading consent to sell cut flowers, pot plants and seasonal floral goods at the corner of High Street and Church Street. Appendix A and Appendix B showed the proposed location and an image of the trading unit. Mr Ursell had applied for consent to trade from 7th December to 24th December 2017 between the hours of 07:00 and 19:00 hours. The case had been referred to Committee because it was not in an approved location in the street trading policy, however, Mr Cooper informed Members that the location had been used previously for trading, including by Mr Ursell.

Members were advised by the Officer that having regard to the facts, Members should decide whether to:

Approve the application because Members were satisfied that the location, size of unit and type of goods were suitable or;

Refuse the application because it does not comply with the council's adopted policy as the location is not approved for street trading.

The Members began by querying whether there had been any previous complaints regarding trading in this location. The Licensing Officer informed Members that there had been one, he explained that this had been made in 2011 from a nearby shop which complained that Mr Ursell had encroached on the space outside the shop. Mr Ursell claimed that he was unaware of the complaint and Mr Cooper advised that this matter had been resolved and there were no further issues.

The Members proceeded to ask Mr Ursell a series of questions and he was invited to provide a statement in support of his application. His responses were as follows:

- He confirmed it had been a family run business for 114 years and he had been trading up until 2015.
- He informed Members that for the past 4 years he had been suffering from a series of serious health issues and he now felt up to trading again.
- Members raised some concern over the timings he was proposing to trade considering his health issues. Mr Ursell confirmed he would likely to be trading from 9am – 4pm/5pm but wanted the leniency in case trade was going well.
- Members also questioned whether he would be happy to trade within the designated area given the previous complaint and if the picture in Appendix B was a fair representation of what he was proposing. Mr Ursell confirmed he would stick within the designated 2.1m x 1.2m space and was likely to use the floor space rather than a barrow.
- Members also questioned how he proposed to restock as it was a limited sized stall. Mr Ursell confirmed he had permission to park his van in the churchyard and restock from there.

Following a short discussion, Members agreed that no harm would be caused from Mr Ursell trading in the designated area given that it was for such a limited time.

The committee were invited to vote on section 1.4.1.

The committee voted unanimously in favour of granting the application.

RESOLVED THAT

The application be approved because Members were satisfied that the location, size of unit and type of goods were suitable.

5. RENEWAL OF HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer introduced the report regarding a renewal of Mr Paul Bacon's Hackney Carriage driver's licence HCD 735. He informed Members that Mr Bacon's certificate from the Disclosure and Barring Service (DBS) had shown a caution which Mr Bacon had failed to disclose on his renewal application form as required by Council policy. He drew Members' attention to paragraph 4.6 of the report which notes:

'Members are to note however that in order for the police to issue a formal caution, the offender has to admit an offence and agree to be cautioned. A caution cannot be issued if the offender does not comply with the two conditions above.'

In light of this the Committee were asked to consider whether to:

- *Grant Mr Bacon's application to renew a Hackney Carriage driver's licence with no further action taken because the Committee considers him to be a fit and proper person, or*

- *Refuse to renew Mr Bacon's Hackney Carriage driver's licence because the Committee considers him to no longer be a fit and proper person.*

On a point of clarification the legal officer informed Members that a caution is the disposal of an offence in an administrative way following an admission. The alternative option would be to go to court.

Mr Bacon was invited to give his account of events. He informed Members that:

- The incident was a genuine mistake and he thought his wife had paid for the shopping.
- He had shamefully gone along with something he had never done before.
- He felt it was unfair that had he been shoplifting then he would have been let go, it was only for the fact that he had admitted to the mistake that the police had been called and he had been cautioned.
- He explained that his wife's father had died 2 days previous to the incident and it was because of this state of grief that she did not pay.
- It was his wife who had written the letter on his behalf explaining the incident.
- Mr Bacon had taken the blame for the incident but the police believed it was his wife's wrong doing.
- He claimed that Tesco had accused him of stealing on several occasions yet he had never been convicted of anything and had never been in trouble with the police before.
- He informed the Committee that he had been a taxi driver for 18 years.
- He wasn't even aware that he had even been cautioned as it was his wife who had to attend a criminal conviction course in Birmingham. This was therefore why he had not disclosed it on his renewal form, it wasn't a case of trying to de-fraud the system, just a genuine mistake which he felt embarrassed about.
- He informed Members that he had character references if they wished to view them.
- He Bacon proceeded to tell Members of a story whereby he helped a drunken lone female to get home and did not charge her when she was sick in his taxi, he then helped to reacquaint her with her lost purse the following day which she had left in his taxi. He felt this highlighted his good nature, and showed he was not a thief.

In response to questions the Licensing Officer informed Members that the Council records went back 15 years and in that time they had no previous complaints against Mr Bacon. He also advised that drivers were still able to drive whilst the renewal of their licence is being determined, and so at present Mr Bacon was still legally able to drive.

Members and the Legal Officer proceeded to ask Mr Bacon a series of questions, his responses were as follows:

- He claimed that they did a duplicate shop every week as his father-in-law who had lived with them previous to his passing gave them money to do his shop and they would buy the exact same items for him.
- Mr Bacon explained that Tesco had gone back and examined the CCTV and could find no evidence of shoplifting on previous occasions.

- Mr Bacon confirmed that he and his wife had two trollies both with the same items, he explained that he had gone off with one trolley and left his wife with his card to pay for the other trolley.
- He stated that they did a shop every Monday.
- He explained that they only used one scanner and it was his wife who was doing the scanning.
- He couldn't answer as to why he left his wife with the trolley and didn't wait with her to pay.
- He also couldn't explain why they were still doing two identical shops even though the father in law had passed away; he suggested it was just simply out of habit.
- He explained that he had not challenged the DBS check when it had come back with a caution or flagged it up with the police or licensing team as he believed there was nothing he could do regarding the caution at this point. He felt the only option was to try and prove to the committee that he was a fit and proper person.
- He claimed that they only made one payment for the two trollies not separate transactions.
- He confirmed he used a Tesco Clubcard and a Visa card to make the transaction.

Members made the following observations with regards to Mr Bacon's responses:

- That if it was the case that Mr Bacon did the same shop every week there would be evidence to prove Mr Bacon's innocence. There would be CCTV of him and his wife in the shop and they would be able to examine what they purchased.
- They felt if it was the case that they merely forgot to pay for one trolley then their balance this week would be exactly half of that of what it was in previous weeks.
- Members discussed the possibility of obtaining information from Tesco regarding Mr Bacon's spending habits. The Licensing Officer informed Members that the committee do not have similar powers to that of the Courts who have court orders. He advised that Tesco would be unlikely to release information to the council as they have to follow data protection regulations.
- The Legal Officer reminded Members that it was important to focus on the information which they had before them rather than the information which they did not and make a decision based on this.
- Some Members felt that the burden should fall on the applicant to prove his innocence and obtain receipts from Tesco himself. As Mr Bacon had suggested he and his wife did a double shop every week Members felt that receipts or bank statements would highlight this. Mr Bacon disputed that a bank statement would only show an amount not the actual items purchased.
- The Chair queried who the burden of obtaining proof is on. The Legal Officer advised that on the first issue of a licence the applicant has to prove they are fit and proper, but to revoke, the Council has to prove (on balance of probability) they are not fit and proper.
- Concerns were raised over the fact Mr Bacon did not query the caution when he received the DBS check back.

- Members did however acknowledge that they had to take into account Mr Bacon's wife's part in the incident and other mitigating factors such as the death of Mr Bacon's father in law 2 days prior to the incident.
- Some Members suggested that it may have been a genuine mistake due to the fact the case had not been brought in front of the courts.

Mr Bacon raised a concern that if this session was to determine whether he was fit and proper nobody had acknowledged the character references. The Licensing Officer circulated the references to Members.

The Chair advised that in light of the information they had before them Members could either grant or refuse to renew Mr Bacon's licence or grant with a written warning. The Licensing Officer advised that if the Committee were to defer until further information was provided then they would need to be clear about what further information they required and by whom. Some felt that they would be inclined to grant with a written warning as they did not feel Mr Bacon posed an immediate risk to the public. They were also reluctant to refuse Mr Bacon's licence without hard evidence.

Mr Bacon was invited to give his final right of reply. He affirmed that:

- He was not a thief and again alerted Members to the story of the drunken lone female, he felt this highlighted his good nature.
- Police had looked at the evidence available and had still not charged Mr Bacon.
- He had 18 years experience as a taxi driver and this action was very out of character for him.

The Chair invited Members to vote on whether the case should be deferred to the next meeting subject to Mr Bacon providing more evidence.

Upon a vote it was (4 for 1 against)

A discussion regarding what evidence needed to be provided ensued. It was agreed that bank statements from the last 12 months should be provided and preferably receipts. The bank statements would reinstate the fact that Mr Bacon shopped every Monday. Mr Bacon advised that he did not keep receipts but it was suggested these could be obtained from Tesco. It was also suggested that information from Mr Bacon's Tesco Clubcard would identify his spending habits.

The Licensing Officer confirmed that evidence would need to be received by the 19th December in order to meet the deadline for the January Committee. It was also agreed that the case would come back to the February Committee irrelevant of what information was received by then.

RESOLVED THAT

The application be deferred subject to the applicant providing additional information and for the matter to then be brought back to this committee for a review in February.

6. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

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

- Whether the licence holder's Hackney Carriage driver's licence be reinstated because the Committee is satisfied that he is a fit and proper person to hold such a licence; or
- Whether the licence holder's Hackney Carriage driver's licence be revoked as the Committee considers him not a fit and proper person to hold such a licence.

Upon a vote it was (4 against and 1 Member for)

Resolved That

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

David Willingham
Chairman