

Licensing Sub-Committee - Miscellaneous

Wednesday, 7th February, 2018
6.00 - 7.00 pm

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

Minutes

1. APOLOGIES

Apologies were received from Councillor Thornton.

2. DECLARATIONS OF INTEREST

There were no declarations of interest.

3. MINUTES OF THE LAST MEETING

The minutes of the last meeting held on 3rd January 2018 were signed as a correct record.

4. GENERAL VERBAL UPDATE FROM THE LICENSING OFFICER ON RECENT MEDIA REPORTS AND OTHER MATTERS

The Licensing Officer began by providing a verbal update to the sub-committee on a number of recent media reports.

In the first case he explained that a driver from Bristol has been prosecuted by Cheltenham Borough Council for unlawfully plying for hire. He proceeded to explain that on Friday 17 March 2017 two officers from Gloucester City Council, working in partnership with officers from Cheltenham Borough Council, approached a silver Vauxhall Vivaro. The vehicle was licensed by Bristol City Council as a private hire vehicle.

Both officers approached the car and asked the driver if he was free. The driver asked where they wanted to go and the officers responded that they wished to go to Gloucester. Following a discussion, the driver suggested a price of £42 for the journey which the officers accepted. The driver invited the officers to get into his vehicle to take them to Gloucester without an advance booking and was subsequently stopped and cautioned.

The driver was invited to attend an interview under caution on 20 April 2017 but failed to attend. He instead submitted a written statement.

The driver was reported for the offence of unlawfully plying for hire and was summoned to appear before Cheltenham Magistrates' Court on Monday 15 January 2017. He was subsequently fined a total of £580.00 for the offence.

The Licensing Officer reported that in a second case Cheltenham Borough Council had been awarded £838 in costs following the last-minute withdrawal of an appeal against its licensing committee's decision.

He explained that in January 2017 the licensing committee revoked a private hire driver's licence after the driver accrued 12 penalty points for driving at excess speed on four separate occasions. The driver did not declare any of the penalty points to the Council as required under the terms of his licence and as such the committee felt that the facts showed he was not a fit and proper person to hold a licence. His licence was revoked with immediate effect in the interests of public safety.

The driver subsequently lodged an appeal with Cheltenham Magistrates' Court which the Council contested, but withdrew his appeal on the morning of the hearing. The Council pursued its legal costs in contesting the appeal. On Monday 8 January the court decided that the driver should pay to the Council the full costs of the appeal, amounting to £838.

The Licensing Officer also announced that Cheltenham had successfully retained its Purple Flag status – awarded in recognition of an evening and night-time economy which is appealing, welcoming and safe.

He explained that Purple Flag is a national town and city centre award which aims to raise the standard and broaden the appeal of town and city centres between the hours of 5pm and 5am. Areas awarded the Purple Flag are recognised for providing a vibrant and diverse mix of dining, entertainment and culture while promoting the safety and wellbeing of visitors and local residents.

He reported that feedback from the assessment panel noted the considerable building and refurbishment works in the town centre with likely positive impacts for the evening and night time economy, the influence and support of the Cheltenham Business Improvement District, ongoing work on reducing drunkenness at race meetings and falling levels of crime and disorder in the town during the evening and at night.

On behalf of the sub-committee, the Chairman thanked officers for their hard work which had led to these successful outcomes.

5. APPLICATION FOR A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer introduced the report regarding an application for a Hackney Carriage driver's licence. He explained that Mr Hassan had passed all the necessary tests to become a driver, however, he had been brought before the sub-committee due to the fact he had 6 penalty points on his DVLA driver's licence. He informed Members that under the Council's licensing policy a driver's licence must be free of convictions and endorsements for at least one year when the application is made. The offence whereby Mr Hassan had received the 6 penalty points had occurred on 1st May 2017.

The Licensing Officer explained that in light of this, the sub-committee could either:

- Grant Mr Hassan a Hackney carriage driver's licence because the sub-committee considers him to be a fit and proper person to hold such a licence; or
- Refuse the Hackney carriage driver's licence because the sub-committee does not consider him to be a fit and proper person to hold such a licence.

When questioned, the Licensing Officer informed the sub-committee that the Council's Licensing policy had been made on 15th July 2014. One Member noted that at the time the policy was made the punishment for using a mobile phone was 3 penalty points and as such would be considered a minor traffic offence. The Licensing Officer also confirmed that all 6 penalty points had been received at the same time and for the same offence.

Mr Hassan proceeded to give his account of the incident in question. He stated that:

- He had been driving with his grey glasses case to the side of him which the police had mistaken for a mobile phone and subsequently stopped him.
- He had to provide a written statement and was advised he would have to go to court.
- When he spoke with friends they encouraged him to hire a solicitor. However, he explained that if he were to lose the case he would be unable to pay the court fees and so had accepted the offence.
- Mr Hassan stated that he had applied for a private hire licence in Tewkesbury which he had been granted, despite the fact he had declared his points. He confirmed he had obtained the licence from Tewkesbury in July 2017.
- He informed the sub-committee that he had passed the medical and other tests as required.

The Legal Officer confirmed that it was possible for Mr Hassan to be licensed in two different boroughs.

The sub-committee proceeded to ask Mr Hassan a series of questions. The Chair queried whether Mr Hassan had read the Council's licensing policy, he also questioned why they should make an exception for Mr Hassan and vary the policy which clearly states a driver's licence must be free of convictions for at least one year when the application is made. Mr Hassan reiterated that he had filled out all the necessary forms and passed the medical but he was unaware of the Council's policy on convictions. He explained that the Licensing team had not made him aware of the policy and it had only been mentioned to him following the completion of the knowledge test. Following questioning, Mr Hassan confirmed that he only required the glasses when he was watching TV and not whilst driving.

The Chair reminded Members that the onus was on Mr Hassan to prove that he was fit and proper to hold such a licence and if they were minded to vary from the licensing policy then they must have clear reasoning for doing so.

The Members then moved to vote on section 1.4.1 to: *grant Mr Hassan a Hackney Carriage driver's licence because the sub-committee considers him to be a fit and proper person to hold such a licence.*

The sub-committee voted unanimously against section 1.4.1.

Resolved that

The sub-committee refuse Mr Hassan's licence application because the sub-committee does not consider him to be a fit and proper person to hold such a licence.

The Chair reminded Mr Hassan that they were refusing his licence application at present, however, he would be free to reapply in the future. Members questioned whether the case would still come before the licensing sub-committee if it had been 12 months since the date of the offence. The Licensing Officer explained that the case would likely come back before the sub-committee as it is considered a major offence and so careful consideration would need to be given to it. Members were encouraged to be mindful of section 3.4 of the report which states "*an isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of Hackney Carriage and private hire vehicle drivers*".

The Chair advised Mr Hassan to read Cheltenham Borough's Licensing policy and to contact the Licensing Officer should he have any queries. For clarity, he was reminded that he would need to be free from convictions from the day of the offence.

When questioned why he was able to obtain a licence in Tewkesbury but not Cheltenham the Legal Officer explained that each local authority has a different policy and it is Cheltenham's policy that drivers are free of convictions for 12 months. Mr Hassan also questioned whether the licensing documents he had already submitted would need to be re-submitted. The Licensing Officer advised that the practical driving and English tests would stay on file, however, the medical and criminal record check would need to be redone as this only stay valid for 3 months.

6. 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 agenda items 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) Local Government Act 1972, namely:

Paragraph 1; Information relating to any individual.

Paragraph 2; Information which is likely to reveal the identity of an individual.

Paragraph 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

7. RENEWAL OF HACKNEY CARRIAGE DRIVER'S LICENCE

The sub-committee then moved to vote on section 1.7.1 *to renew the Hackney Carriage driver's licence with no further action taken because the sub-committee considers him to be a fit and proper person.*

The sub-committee voted unanimously against section 1.7.1.

Members were then invited to vote upon section 1.7.2 *to renew the Hackney Carriage driver's licence with a written warning to be issued to him regarding his future conduct.*

3 Members voted for and 1 Member voted against.

Resolved that the sub-committee renew the Hackney Carriage driver's licence with a written warning to be issued to him regarding his future conduct.

David Willingham
Chairman

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