

Licensing Sub-Committee - Miscellaneous

Wednesday, 7th November, 2018

6.00 - 8.55 pm

| Attendees | |
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| Councillors: | David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Simon Wheeler |
| Also in attendance: | Vikki Fennell and Phil Cooper |

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 be amended to remove 'on a point of order' at the bottom of page 8.

Subject to the above amendment, the minutes of the last meeting on 3rd October 2018 were signed as a correct record.

Cllr Parsons also wished to put on record his thanks to Sophie McGough, Democracy Officer for her concise minutes at previous meetings.

4. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer introduced the report, he explained that an application had been received from Mr Robert Metz for a street trading consent to sell Dutch mini pancakes from a converted Rice horse trailer at the location designated Promenade 1 in the council's street trading policy. Mr Metz has applied for an annual consent on a Thursday from 09:00 – 16:00. He advised that, whilst the location was a permitted trading location in the council's adopted policy, the location was permitted for the sale of ice-cream, signup services, busking, arts & crafts, flowers/plants and fruit and veg only. The location of the proposed trading pitch was outlined at Appendix 1 of the report and an image of the trading unit at Appendix 2.

The Licensing Officer explained that whilst the application did not comply with the council's adopted policy with regards to its permitted trading, the sub-committee should take in to account the individual merits of the application and any circumstances that may warrant a deviation from the policy. He further advised that Mr Metz had originally applied for an application for the sale of hot drinks also, however, this had been withdrawn due to the large number of

establishments within the immediate vicinity already selling hot drinks. During the consultation period an objection had been received from Townscape team and this was outlined in the background papers.

He advised the sub-committee that they could:

- **Approve the application because Members are satisfied that the location is suitable, or**
- **Refuse the application because it does not comply with the provision of the Street Scene policy or for any other reason.**

The Chair firstly wished to remind the sub-committee that they were limited to either refusing or approving the application and it was not their job to determine the relocation of the unit.

In response to Members questions, the Licensing Officer confirmed that:

- 'Rice horse' was a type of horse trailer;
- In response to a query about the aesthetics of the unit being unsuitable for the location, and why the coffee trader at the end of the promenade had been allowed with a similar looking unit, the Licensing Officer confirmed that the comments regarding the aesthetics of the unit had come from Townscape and that the unit conforms with the licensing policy in terms of its appearance.
- If approved the licence would be granted for 12 months, the sub-committee had the powers to grant it for less time, but not longer;
- The dates of the Christmas markets had all been decided and Mr Metz was aware he would not be able to trade during these times. With regards to Mr Metz joining the market, CBC had no control over this as it was a private market, however, they could put him in touch with the relevant people;
- The Licensing Officer confirmed that he would need to check whether all the sites approved for the sale of such goods were occupied. However, if the sub-committee were minded to refuse Mr Metz could come back and they could have further discussions on a more suitable location.

Mr Metz was then invited to speak in support of his application. He explained that:

- Whilst he appreciated that there were several food providers along the promenade, he didn't believe they sold anything similar to the product that he was offering. He felt that he would add to the offer already available in Cheltenham;
- He was based in Cheltenham and thought it was nice to have local traders in the area;
- He was aware that the space was not available around Christmas when the market was there;
- He requested further clarification on the points raised in the Townscape objection as to why the unit was not appropriate for the promenade;
- The alternative location of the long gardens, as had been suggested by Townscape was too narrow for his unit;
- He was willing to consider alternative locations, although this location on the promenade would be his preferred option.

In response to Members question, Mr Metz confirmed that:

- Dutch pancakes, were very small pancakes made with yeast to make them extra fluffy. He sold them in portions of 10;
- He was only proposing to trade for 1 day a week due to his personal availability as his busiest days were Friday and the weekend, he also had other family commitments. If it were successful he may reconsider this;
- He offered sweet and savoury options and sourced his produce locally. The cost of the pancakes would be £4.50 for the sweet option and £5.50 for the savoury;
- In response to a query about whether Mr Metz had read the Council's street trading policy, he confirmed that he was new to the industry and it had been a steep learning curve, he had spoken with other local traders and met with the licensing team at CBC where he had been referred to the online pages;
- A bin would be available immediately adjacent to the stall and it was his intention to have the table and parasol out, although if this was an issue he would be happy to not display them. The Licensing Officer confirmed that if Mr Metz were to display the table and parasol the unit would not fit within the permitted site, so they would need to ensure it did not cause obstruction to pedestrians. Mr Metz advised that the unit would be clearly demarcated so as to alert people to it and not cause obstruction;
- He would use gas bottles and take electricity from the phone box, although this still needed to be confirmed with the relevant parties. He would also ensure that the electricity cables were covered.

In conclusion, Mr Metz felt that he offered a different variety of food that catered to a lot of people and felt it would add to the offer Cheltenham already had.

Members proceeded to debate the application:

- One member did not agree with the Townscapes comments but did have concerns about businesses in the immediate vicinity who sold similar products;
- Following concerns about scavenging gulls, one Member suggested a condition be applied which ensures the area is kept as clean as possible. The Licensing Officer confirmed that they had a standard condition on street trading licences which states all traders must keep the site clean;
- One Member felt that competition was healthy, however, it was only fair when there was a level playing field. In this instance he did not feel it was fair as the other established shops along the promenade had to pay business rates and go through the planning process;
- Others Members felt that the offering from Mr Metz was very different and he appealed to a different clientele to those who may frequent in the nearby restaurants;
- The Chair reminded the sub-committee that they must determine the application on its own merits;
- It was established that the Townscape team had objected on behalf of the eateries in the area and they themselves had not actually objected to the application. The Licensing Officer advised that consultation with local businesses happened through the BID and if the businesses had objected they would normally expect the BID to object on their behalf;

- Some Members agreed that from the assessment criteria the 'needs of the area' was the most pertinent factor and queried whether the competition was fair.
- In response to concerns that approval may set a precedent for future applications, the Licensing Officer advised the sub-committee that they could condition the licence so that this time next year, the licence be reviewed and consultation take place. Alternatively, he explained that a street trading licence could be reviewed at any time should there be complaints.

Members proceeded to vote on section 1.5.1 of the report, to approve the application because Members are satisfied that the location is suitable.

Upon a vote it was 2 in favour and 3 against.

RESOLVED THAT

The application be refused because Members are not satisfied that the location is suitable.

5. APPLICATION FOR A STREET TRADING CONSENT

The Licensing Officer introduced the report, he explained that an application had been received from Miss Kayleigh Evans for a street trading consent to sell "Direct Trade" quality coffee and traditional Italian Gelato from the location 'High Street 7' located on Cambray Place. She proposed to trade from 08:00 – 15:00 every day. He advised that the application does not comply with the Council's street trading policy as that location is permitted for the sale of flowers/plants, arts & crafts, ice-cream and fruit & veg but not the sale of hot drinks and confectionary due to the high concentration of existing coffee shops in the vicinity. He explained that a number of objections had been received to the application and these were outlined in the accompanying background papers.

He advised that the sub-committee that they could:

- **Approve the application because Members are satisfied that the location is suitable for the proposed trading, or**
- **Refuse the application because it does not comply with the provision of the adopted Street Trading Licensing Policy or for any other reason.**

The applicant, Miss Kayleigh Evans and her husband Chris Evans spoke in support of the application. They explained that:

- The van was a 1964 French fire truck which they had converted. They had got the idea when they had visited Venice;
- They wanted to offer a unique experience to customers and felt that the van was a talking point and the history of it interested customers;
- The produce they used was high quality;
- Key to their business model was sustainability, they used no plastic and were as sustainable as possible;
- They had applied for a licence to also sell hot drinks as the English climate meant it was not always possible to just sell gelato;

- They confirmed that they had read the Council's street trading policy and consulted with the licensing team;
- Mr Evans confirmed that they had a litter bin next to the unit;
- They explained that they sympathised with local business and it was not their intention to antagonise or put them out of business. They felt that they offered a different product to nearby establishments;
- They had heavily invested in the van and invested in the best ingredients, they did not benefit from power of the masses that large retailer consumers did;
- They were happy to amend the application to suit if Members felt it necessary.

Mr and Miss Evans offered the following responses to Members questions:

- The concept of the van had been a joint idea, however, it would be Miss Evans who ran the business day to day as Mr Evans worked full time in a different business;
- They had applied for a licence 7 days so they had the flexibility, if the application were to be accepted Miss Evans would look to hire somebody for 1 or 2 days a week. There were be a maximum of 2 employees at any one time.

In the debate that followed, Members explained that:

- A lot of the concerns they had regarding the previous application still stood i.e. the needs of the area and the conflict with other retailers;
- Members were conscious of the significant investment the Council had put in to improving the High Street and were concerned about the weight of the vehicle on the new paving. Mr Evans confirmed that the vehicle was actually poly carbonate and not as heavy as it appeared. The Licensing Officer explained that they would expect Townscape to comment on the weight should they have any concerns regarding this;
- Some Members were concerned as to whether the van would fit within the permitted location without causing obstructions to pedestrians and other vehicles. The Licensing Officer confirmed that they had consulted with Highways England who they would expect to comment if there was insufficient space;
- Members agreed that the van and the product they were offering was great but it wasn't in the right location due to the direct competition with other food and drink establishments;
- Members strongly encouraged Miss Evans to speak with officers to find a suitable location;

Members proceeded to vote on section 1.5.1 of the report to approve the application because Members are satisfied that the location is suitable for the proposed trading.

Upon a vote it was 1 in favour and 4 against.

RESOLVED THAT

The application be refused because Members are dissatisfied with the location for the proposed trading.

6. REVIEW OF A PRIVATE HIRE DRIVER'S LICENCE

The Licensing Officer introduced the report. He explained that Ms Elaine Glave holds a Private Hire Driver's licence with the Council and had been licensed since 2010. He confirmed that on 19th July 2018 Ms Glave had reported to the council that she had received notice that 3 penalty points were to be imposed on her DVLA driving licence for a speeding offence, bringing her total number of points to 9. Two of the offences were on a public road and one on a motorway. He advised that Miss Glave had reported all the points in the required time but the matter had been referred to the committee as Miss Glaves points exceeded 7.

He advised the sub-committee that they could:

- Determine to take no action if Members consider Ms Glave to be a fit and proper person to hold a licence; or
- Take such of the following steps as the sub-committee consider appropriate:
 - (a) Give a written warning;
 - (b) Require the driver to pass an approved private hire driving test, at the driver's own expense, within 2 months of their decision;
 - (c) Suspend the licence (please refer to paragraph 4.5 in relation to this option); and
 - (d) Revoke the licence.

The Licensing Officer confirmed that SP50 is the code given for the offence of speeding on the motorway and does not refer to the speed limit.

Miss Glave was invited to give her account of events. She explained that:

- All three offences had occurred on the motorway;
- She recalled when all 3 instances had occurred. One was driving on the motorway back from Bristol, one on the bypass from Cirencester to Cheltenham and one when she was travelling on the bypass towards the M5. On all three occasions she had had no passengers in the car;
- She had been a taxi driver for 9 years and up to last year she had had a clean licence;
- She had had a difficult year as both her parents had passed and her daughter had been hospitalised;
- Her father had been a carer for her mother and when he passed she had been travelling 2 hours to see her mother in the Peak District as she was concerned about her living alone;
- She was supporting her daughter financially who still lived at home;
- She also had the expense of paying off her car monthly.

In response to Members questions. Miss Glave advised that:

- She had a previous offence a few years ago but opted to do a speed awareness course rather than take the points;

- On all of the offences she had been doing 80mph in a 70mph zone;
- She had changed her car 2 years ago as she had continual problems with her old car, the expense had nearly caused her to become bankrupt;
- She advised that all of her personal issues she had mentioned previously had now been resolved;
- To ensure she did not incur any further penalties on her licence, she always used cruise control when she was in the car to ensure she was within the speed limit;

Following a question from a Member, the Licensing Officer confirmed that the cost of the approved private hire driving test was £85.

The Members proceeded to debate the application:

- One Member noted that should Miss Glave receive any more penalty points she would be banned from driving. They therefore felt comfortable with anyone of their family members being in the car with Miss Glave as they believed she would now be extremely cautious. They believed no action should be taken as they had no sanction to match that of a driving ban;
- Other Members sympathised with Miss Glave's personal circumstances and appreciated she had had a difficult couple of years. They did not feel comfortable taking away Miss Glave's livelihood but felt that the sensible option may be to require Miss Glave to do the approved private hire driving test which would reiterate the severity of the situation;
- The Licensing Officer reminded the sub-committee that it was not their duty to punish Miss Glave but to ensure she was a fit and proper person;
- One Member felt that neither the written warning or driving course would achieve anything and the fact that next time Miss Glave would lose her licence was enough of an incentive to drive carefully;
- One Member felt that some action should be taken as the safety of the travelling public was paramount and the public would expect something to be done. Although they were satisfied that the mitigating circumstances had been resolved and felt a written warning would suffice;
- The Legal Officer confirmed that if the sub-committee could not reach a decision, the Chair would have the deciding vote.

Members proceeded to vote on section 1.4.1 of the report to determine whether they consider Ms Glave to be a fit and proper person to hold a licence.

Upon a vote it was 4 for and 1 against.

Members voted on whether to take no further action.

Upon a vote it was 1 for and 4 against.

Members voted on section 1.4.2a to issue Miss Glave with a written warning

Upon a vote it was 3 for and 2 against

Members voted on section 1.4.2b Require the driver to pass an approved private hire driving test, at the driver's own expense, within 2 months of their decision

Upon a vote it was 2 for and 3 against

Resolved That

Members consider Ms Glave to be a fit and proper person to hold a licence but issue her with a written warning

7. REVIEW OF A HACKNEY CARRIAGE DRIVER'S LICENCE

The Licensing Officer introduced the report. He explained that Mr Malcolm Rogers was a Hackney Carriage Driver licenced with Cheltenham Borough Council. He reported that on 17th September 2018 the licensing team received a complaint concerning Mr Rogers' behaviour. A statement from the complainant was included in the background papers. Mr Rogers had disputed the incident and had provided his own statement of events which was also included in the background papers. The Licensing Officer advised that there had now been 9 complaints recorded against Mr Rogers between 2008 and 2018. The matter had been referred to the licensing sub-committee to allow Members the opportunity to consider whether Mr Rogers is a fit and proper person to hold a hackney carriage driver's licence given the complaints and the information provided.

He advised the sub-committee that they could:

- Determine to take no action if Members consider Mr Rogers to be a fit and proper person to hold a licence; or
- Take such of the following steps as the sub-committee considers appropriate:
 - (a) Give a written warning
 - (b) Suspend the licence (please refer to paragraph 4.5 in relation to this option)
 - (c) Revoke the licence

The Licensing Officer offered the following responses to Members questions:

- Of the 260 taxi drivers licenced in the Borough, there were a small number of drivers with more than one complaint against them, but he couldn't recall any driver who had as many as 9 complaints;
- In each complaint that had been reported, Mr Rogers had been invited to speak with the licencing team, however, no action had been taken until now;
- He advised that witness statements may have been taken in the previous complaints, however, all the evidence held on the council's corporate database was before them;
- The dash cam footage from the incident in September had not been provided by Mr Rogers.

Mr Rogers was invited to give his account of the events. He advised that:

- In the first incident in 2008, he had gone to the police as he had been followed down the road and threatened and despite the fact that no action had been taken against him, the complaint still stayed on his record;
- He recalled the most recent incident in September 2018. He explained that it was around 06:10 and he had been on his way to work with a customer in the car. He had been driving along Christchurch Road when the complainant had pulled out of their driveway which caused Mr Rogers to stop and subsequently flash his lights. He took the customer to Tesco and pulled up at the station, at this point he had forgotten about the incident completely until a gentleman came over to him and as he recalls poked him. The gentleman was verbally abusive to him and followed him in to the station before taking a picture of Mr Rogers car.
- Mr Roger's explained that he would never use bad language and other drivers would support this statement.

In response to Members questions, Mr Rogers explained that:

- He had been driving along Christchurch Road towards the station and the driver had pulled out from the right hand side of the road;
- He explained that the dash cam overrides itself depending on the number of hours worked and due to the fact the incident was not reported until 5 days later he no longer had the footage;
- He explained that he had gone to the police, however, they advised that it was not in the public interest to pursue the report due to limited resources;
- With regards to the comments in his statement about feeling like he was in court, Mr Rogers confirmed that he had never been to court, however, on each occasion when he had to come in to the council to give a statement he always felt as if he were guilty;
- He felt that taxi drivers were vulnerable to such incidents and always deemed to be in the wrong;
- He remembered all of the previous incidents, all of which he stated had been malicious complaints;
- He recalled another complaint whereby he had been cut up by another driver whilst going past GCHQ, he explained that people were often irritated by taxi drivers and refused to let them out. He denied swearing at the lady and advised that he would never cuss at a woman. Even though it was not his fault, they had phoned the council and then the complaint was on record;
- He recalled a further incident where he had sustained an injury after another taxi driver had cut his hand whilst trying to put a customer's case in his car boot following an altercation about whose fare it was;
- Mr Rogers confirmed that you needed permission from Great Western to work in the railway station;
- He reported that there had been an incident where he had advised a lady she was unable to park at a location at the railway station as he feared she would block the rank, she had not explained that she was working at the railway station and he feared she would get on a train and people would be unable to access that taxi rank;
- He failed to answer why 9 malicious calls had been made against him and very few other taxi drivers were near this number of complaints;

In summary, Mr Rogers explained that:

- He had been a taxi driver for over 30 years, and in this time he had been spat at, sworn at and even hospitalised after being beaten up, however, in none of these incidents had he involved the council;
- Over the last few years he had been reported several times for defending his wellbeing and each incident had been unfounded;
- In his time as a taxi driver, he had never been in trouble with the police, been caught speeding or had any parking violations, he was not happy that previous incidents that were unfounded kept being brought up;
- He recalled a recent incident whereby he had taken a young girl to Poole when several other taxi drivers had refused, she was extremely thankful yet these positive experiences were never reported to the council;
- Mr Rogers felt he was a fair and upstanding member of the public;

Members proceeded to debate the application;

- One Member reasoned that it was their duty to protect the public first and foremost and they had to act on the balance of probabilities. On the basis of all the complaints they would not be happy for a family member to travel in the car with Mr Rogers. They were also concerned that it was allowed to get to this stage before the matter was called before the committee. He felt that all the complaints couldn't be malicious but was minded to hand out a yellow card rather than a red;
- One Member felt it was difficult to make a decision given the limited information they had about the previous complaints, he requested that in future incidents the driver be given the opportunity to provide a statement at the same time as the complainant. He did not feel it fair to suspend or revoke given the limited evidence;
- One Members suggested than in future Mr Rogers swap the card in the dash cam before the footage was overridden;
- Other Members agreed that it was difficult given the lack of evidence, however, there appeared to be a common theme with the complaints they shared other Members concerns that it should not have got to this stage before coming before the sub-committee;
- With regards to the interest of public safety, some Members felt some action was necessary, although revoking Mr Rogers licence was not reasonable given the evidence;
- One Member noted that none of the incidents had actually involved passengers and it wasn't Mr Rogers driving which was called in to question, it was his treatment of other road users. Following this, one Member noted that the incident in November 2011 did involve a passenger;
- Other Members acknowledged that there was a common theme of road rage and agreed that a yellow rather than red card should be issued in the form of a written warning.

Members proceeded to vote on section 1.5.1 to Determine if Members consider Mr Rogers to be a fit and proper person to hold a licence.

Upon a vote it was unanimous

Members voted on whether to take no further action.

Upon a vote it was 1 for and 4 against

Members voted on section 1.5.2a to give a written warning.

Upon a vote it was 4 in favour and 1 abstention

Resolved that

The sub-committee consider Mr Rogers to be a fit and proper person to hold a licence but issue him with a written warning.

Members strongly advised Mr Rogers to keep any dash cam footage for at least 30 days.

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

David Willingham
Chairman