

Licensing Committee

Wednesday, 6th March, 2019

6.00 - 8.25 pm

Attendees	
Councillors:	David Willingham (Chair), Paul McCloskey (Vice-Chair), Tim Harman, Diggory Seacome, Angie Boyes, Mike Collins, Roger Whyborn, Dennis Parsons, Jo Stafford and Simon Wheeler
Also in attendance:	Louis Krog and Donna Marks

Minutes

1. APOLOGIES

There were none.

2. DECLARATIONS OF INTEREST

There were none.

3. PUBLIC QUESTIONS

There were none.

4. MINUTES OF LAST FULL COMMITTEE MEETING

The minutes of the full committee meeting held on 5th December 2018 were approved and signed as a correct record.

5. MINUTES OF SUB COMMITTEE MEETINGS

With regards to the exempt minutes of the miscellaneous licensing sub committee meeting, a discussion was had about whether the applicant whose name had been omitted should be made public. The Chair explained that an applicant can't be named if they are the subject of an ongoing criminal investigation. Some Members felt that in the interest of transparency if, for example, a taxi driver is stripped of their licence then the public should be made aware of this and the exemption lifted once the criminal proceedings have finished. The Chair reminded Members that they have a duty under the human rights act and there were GDPR implications of releasing information relating to an individual.

The Licensing Team Leader suggested taking the matter away for further legal advice and bringing it back to the next meeting once the legal position had been clarified.

Subject to the above points, the minutes from the miscellaneous licencing sub-committee meeting held on the 2nd January 2019 were approved and signed as a correct record.

The minutes of the alcohol and gambling sub-committee held on 4th February 2019 were approved and signed as a correct record.

6. ANNOUNCEMENTS FROM THE CHAIR

The Chair explained that Andy and Phil from the Licensing team had left CBC. He wished to place on record his thanks to them for their work for the Council, and wished them well for the future. He also welcomed a new team member, Freya, to the Licensing team.

He further advised that Colin visited Naas, Dublin to attend the latest Purple Flag awards ceremony where he received the new Purple Flag, on behalf of Cheltenham, following its recent successful renewal. He highlighted that Cheltenham had also been nominated for a new Purple Flag award to find the UK and Ireland's best night-time economy. The Purple Flag accreditation uses five main core agenda themes; wellbeing, movement, appeal, place and policy. Cheltenham had been nominated under the 'appeal' category and we will find out if it has been successful at an awards ceremony later this year in June 2019.

7. APPLICATION FOR PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY

The Chair advised that he conducted a site visit on the 5th March, he had not spoken to anyone on site. Councillor Seacome also advised that he had visited the site.

The Licensing Team Leader introduced the report, he explained that Bakers Fine Jewellery had made an application to place an advertising board outside 15 Montpellier Walk. The timings that Bakers intended to display the 'A' board were outlined at 1.2 of the report and a picture of the proposed structure included at Appendix A. He confirmed that the application does not comply with the council's adopted policy with regards to its size which exceeds the maximum permitted dimensions and the fact the premises is not disadvantaged by its location. He advised that the committee must determine the application with a view to promoting the Council's adopted policy and whilst the policy and officer recommendation should not fetter the committee's discretion, the committee should only depart from the policy where there are clear and defensible reasons for doing so.

The Licensing Team Leader confirmed that the area outside Montpellier Walk is classed as privately maintained public highway. This is reflected in the fact that they do not charge them a licence fee, however, the premises still require permission by virtue of being located on a public highway.

The applicant was invited to speak in support of her application, she explained that:

- They had thought it was acceptable to display an A board as many of the other premises on Montpellier Walk also displayed one. Some businesses also had boards larger than what they had displayed. Other businesses on Montpellier Walk also had roped areas with table and chairs within that exceeded the space taken up with an A board.
- They had understood that they were required to leave a certain width on the pavement for pedestrians and they have taken that in to consideration.
- They had not done it to intentionally cause problems but thought they were

within their rights due to the fact other businesses on Montpellier Walk had A boards.

- Bakers was slightly set back and was almost barricaded by the table and chairs of other properties.

With regards to the other businesses on Montpellier Walk, the Licensing Team Leader confirmed that there were a number of pending court cases as several businesses had unlawfully displayed A boards. However, it could take up to 6 months for this to go through the courts. He advised that some businesses were lawfully displaying A boards as they were permitted within areas with table and chairs. He reiterated that the committee should deal with the applications on its individual merits.

Following a question from Members, he confirmed that there were 3 businesses on Montpellier Walk that had displayed A boards without consent and were being dealt with through the courts. He advised that a business located in the basement had consent to display an A board due to the fact their premises was disadvantaged by its location.

In response to a query from a Member about why Bakers required an A board given that they had a large branded awning which was visible from the road, the applicant explained that they wished to highlight the services that they provided which included repairs, particularly as people could often be intimidated by fine jewellers.

In the debate, the Members made the following comments:

- They noted that there were already a number of premises with A boards and table and chairs along Montpellier walk and acknowledged that there was inevitably an issue with the policy given that businesses could display A boards if they also have an area with tables and chairs. They agreed that the policy needed reviewing and a consistent approach to the licensing of A boards needed to be devised. As such, Members felt that the applicant shouldn't be disadvantaged because of CBC's policy and felt it reasonable to deviate from the policy;
- Members agreed that they needed to be mindful of the 3 cases going through the courts and they shouldn't ignore the cumulative effect on the area of allowing such applications. As such, one Member was reluctant to permit the application as it could undermine the 3 other cases that were going through the courts;
- Members highlighted that A boards could cause problems for the blind and partially sighted;
- They empathised with the applicant's point that customers were often nervous about approaching such establishments and understood why they wished to highlight the services they provided. They were also satisfied that the applicant had left enough space on the curb for pedestrians;
- Members believed the applicant acted in good faith and were struggling to see what physical harm the A board caused;
- The A board seemed solid and sturdy and well made. The applicant confirmed that the board would be taken down in high winds and had been designed to be in keeping with the street scene. Members did,

however, acknowledge that it was not consistent with the policy in terms of its size.

One Member suggested deferring the application until after the April meeting when the committee would have had the opportunity to make revisions to the street scene and A board policy. They felt that they needed a clear and consistent policy and the inconsistencies with regards to table and chairs policy was unfair.

The Chair highlighted that the other premises had failed to apply for a licence and that's why they were the subject of court proceedings. He felt that there was a risk to deferring and they had to consider the human rights act. He reasoned that if they were minded to grant it could be revisited in light of the new policy.

The Legal Officer advised that deferring would be inappropriate given that they were unaware of the outcome of the policy review and questioned what the applicant would do in the meantime. She further highlighted that the committee's decision would not materially impact on the 3 other cases going through the courts as the magistrates act on beyond reasonable doubt and so it was for the businesses to prove that they hadn't committed an offence. She advised that they should concentrate on the application before them today.

The Licensing Team Leader confirmed that the committee in 2014 had adopted the street scene policy. However, this was up for review in April and so the committee had the opportunity to make revisions to it. He confirmed that A board licences were renewable each year and so the committee could review their decision once a new policy had been devised. Following a Members question, the Licensing Team Leader confirmed that the committee also had the option to revoke a licence if there is a policy change that affects a previous decision.

One Member questioned when someone commits an offence, whether they are tried on the policies and procedures in place at the time. The Legal officer confirmed that they are judged on the policies that were in place on the day the offence was committed. She advised that the cases going through the court were because the applicant had displayed an A board without consent and because they were causing an obstruction to the highway.

One Member explained that if the committee were minded to permit, they would like to put a condition on the licence regarding the size of the A board, as at present it was not compliant with the council's policy. The applicant confirmed that they would be happy to reduce the size of the A board. Other Members felt that the A board was in keeping with the area and not out of proportion despite the fact it was larger than the policy requirements. It was established that the A board was 170mm too high and 206mm too wide, which the committee reasoned was not a great deal. As such, the Member withdrew their proposed condition.

The committee proceeded to vote on section 1.7.1 of the report to approve the application because Members are satisfied that the location is suitable.

Upon a vote it was unanimous.

RESOLVED THAT

The application be approved because Members are satisfied that the location is suitable.

The Licensing Team Leader confirmed that the policy review was already scheduled for April and within this included a review of street trading, objects on the highway and charitable collections.

8. REVIEW OF PERFORMANCE BRIEFING NOTE

The Licensing Team Leader introduced the briefing note. He advised that the briefing paper sought to provide the Licensing Committee with a performance review of the Licensing Section in 2018. He confirmed that the key performance indicators were outlined at appendix 1, which highlighted the time taken to process applications. He highlighted that the licensing section had been actively contributing to the corporate modernisation and commercialisation transformation work during 2018. He gave an update on the policy reviews and explained that both the taxi and private hire and gambling policy statements had been adopted and implemented in 2018 and the street trading review had been prioritised for this year. Subject to resource availability, the street scene activities and sexual entertainment policy reviews would be initiated in 2019.

Following questions from Members, the licensing team leader confirmed that the figures highlighted at appendix 1 were the time taken to process applications, not the number of applications.

The committee acknowledged that a £93,000 saving had been made as a result of the licensing teams contribution to the corporate modernisation and commercialisation transformation work and wished to thank the licensing team for their hard work

9. DEPARTMENT FOR TRANSPORT CONSULTATION REPORT

The Licensing Team Leader advised that the Department for Transport had launched a consultation on proposed statutory guidance for licensing authorities on taxi and private hire vehicle licensing. He advised that at present there is no statutory guidance on taxi and private hire vehicle licensing. He highlighted that it was important the Committee were given the opportunity to review and respond to the proposed statutory guidance.

Members acknowledged that the issue of taxi and private hire vehicle licensing needed addressing at a national level. Particularly as there had been situations whereby one authority would refuse an application for it to simply be granted in an adjoining authority. Members suggested that there ought to be a core minimum standard for licensing. The Chair advised that there was a national register of refusals and revocations and Cheltenham Borough Council were a member of this register.

One Member drew the committee's attention to section 2.21 of the proposed statutory guidance which states that the Committee/Board model allows for:

Each case to be considered on its own merits. It is rare for the same councillors to be involved in frequent hearings – therefore the councillors involved in the decision making process will have less knowledge of previous decisions and therefore are less likely to be influenced by them.

They noted that it was often considered beneficial to have a committee of Members who have a lot of experience in dealing with similar matters, however, this seemed to imply this was not the case. Another Member disagreed with this and stressed that a consistent approach was necessary and Members should have a sound knowledge of the law when determining applications.

Members agreed that the key was establishing a common core standard so that Cheltenham residents were not disadvantaged by adjoining authorities who did not have as high standards.

Members acknowledged a recent article published by the Local Government Association regarding CCTV in taxis. They noted that there was a balance between offering a level of protection and the privacy of passengers. They questioned what Cheltenham's position on CCTV was as many councils make it mandatory for drivers to have CCTV.

The Licensing Team Leader confirmed that their current policy was that CCTV was at the discretion of the driver and was not mandatory. He advised that they had recently reviewed the taxi policy and so it would not come before the committee again for a few years, although they could make a request to Cabinet for a review. He explained that the issue was that ICO had recently issued guidance which stated that the Council would be the data controller and this carried a great level of responsibility for the authority. He advised that at present they were trying to determine how to take a proactive approach to the monitoring of taxi drivers.

It was also acknowledged that civil warnings issued by the Magistrates Court should be reported to the licensing office and guidance on dealing with them.

10. GOVERNMENT CONSULTATION ON TAXI AND PRIVATE HIRE LICENSING

The Licensing Team Leader advised that the consultation was ongoing and this could be distributed to Members if deemed necessary.

11. MAKE-UP OF LICENSING COMMITTEE

The Licensing Team Leader explained why the report was before the committee. He advised that the full committee had passed a resolution in 2016 for a revised committee structure, this had taken effect in September 2017 and it was requested at committee in December that the committee structure be reviewed. He confirmed that the committee had the option to keep the current structure or resolve as they see fit.

Councillor Parsons explained his reasoning for requesting the review, as below:

- He reasoned that whilst the original structure was not perfect, the present structure was unsatisfactory.
- He noted that there was the miscellaneous committee of 5 that determine almost all applications and despite the fact there are 5 Members on the alcohol and gambling committee only 3 determine the applications.
- The fact that the alcohol and gambling meetings were often held in the day time meant that many were excluded from attending and the same demographic of Members determined the majority of applications.

- He was concerned that Members were not getting the required experience and expertise to determine applications. He also stressed that all of the committees should be politically balanced and that the alcohol and gambling committee should have an assigned Chair, not the current practice whereby the Chair is decided at the meeting.
- He accepted that it was not necessary for 10 people to determine a minor application, however, reasoned that there was normally more than one item on the agenda.
- He questioned whether they needed a full committee of 10 and suggested a compromise between the two structures would be more appropriate.

In the debate that followed, Members made the following comments:

- Members reasoned that they would never be able to achieve a structure that was perfect, however, agreed that the committees should be politically balanced where practically possible as they were not always able to get the required Members. This was particularly important given that there was a statutory deadline to hear applications.
- They suggested that Members should be substituted in and out dependent on when they last served on the committee instead of being picked on a first come first serve basis.
- Some Members felt it important that all Members be given the experience in Chairing a meeting.
- Other suggestions included having a full licensing committee once a year and 11 miscellaneous committees and if there was, for example, a policy which needed determining a miscellaneous committee be promoted to a full committee meeting.
- Members felt that having a full committee to determine an A board was disproportionate and time consuming and also having a full committee of 10 determining all applications could be intimidating to applicants.
- It was suggested that they have a 6/4 split, with 6 on the miscellaneous committee and 4 on the alcohol and alcohol and gambling committee. The Licensing Team Leader highlighted that changing to a 6/4 split would only work on the assumption that all 4 Members were definitely available to attend on the agreed date. The Chair also highlighted that a 5/5 split would be more appropriate as an odd number means the Chair does not always have the deciding vote should this situation arise.
- A Member made a suggestion that the Chair and the vice chair speak with each Member of the committee outside of the meeting to understand any practical implications in order to find the best fit for the majority.
- It was agreed that the Alcohol and Gambling meetings be held in the evening wherever possible and be gender balanced.
- Members agreed that rotating the Members depending on the time since they last served on the committee would be a satisfactory solution which could be trialled for 12 months, but further consultation was necessary.

The Licensing Team Leader confirmed that under the licensing act, the committee are required to establish one or more sub-committees with at least 3 Members on. He also highlighted that there is a requirement for the full committee to have 10 Members on it. He explained that it was often difficult to get the required 3 Members for the ad hoc Alcohol and Gambling committees, even when they are scheduled for the evening. He confirmed that the way the

Council works is that the full committee delegate responsibility to the sub-committees to make the decisions. If there is an issue with the decision made then this is dealt with through the courts.

The committee proceeded to vote on keeping the current committee structure but rotating Members.

Upon a vote it was unanimously passed.

RESOLVED THAT

The current committee structure be kept and revisions made following further consultation.

12. REVIEW OF PREVIOUS DECISIONS

There were no updates.

13. LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION

The committee voted unanimously to approve the following resolution:-

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 7, Part (1) Schedule (12A) Local Government Act 1972, namely:

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

14. ANY OTHER ITEMS THE CHAIRMAN DETERMINES URGENT AND REQUIRES A DECISION

The Licensing Team Leader provided the committee with a verbal briefing about race week planning.

15. DATE OF NEXT MEETING

5th June 2019.

David Willingham
Chairman