

Licensing Sub-Committee - Miscellaneous

Wednesday, 3rd July, 2019

6.00 - 8.30 pm

Attendees	
Councillors:	David Willingham (Chair), Dennis Parsons (Vice-Chair), Mike Collins, Diggory Seacome and Jo Stafford (Reserve)
Also in attendance:	Louis Krog and Vikki Fennell

Minutes

1. APOLOGIES

Apologies received from Councillor Wheeler. Councillor Stafford was in attendance as substitute.

2. DECLARATIONS OF INTEREST

There were none.

3. UPDATE FROM THE CHAIR AND LICENSING TEAM LEADER

Before the substantive items, The Chair and the Licensing Team Leader gave the following updates:

- CBC has won a Purple Flag award for its management of the night-time economy. Thanks to officers and the BID for all their hard work to get this. A press release has gone out;
- Members due to sit on the SEV scrutiny group on 17th July are requested to submit any questions for the invitee in advance of the meeting;
- Any more comments in relation to Tewkesbury's taxi licensing policy consultation should be sent in;
- In January, Members dealt with a confidential item, revoking the license of a taxi driver due to ongoing criminal proceedings. The driver was subsequently convicted and sentenced to 16 weeks in prison. This demonstrates that CBC takes licensing and safeguarding very seriously and won't hesitate to revoke a licence where there are issues of safety to the travelling public.

4. APPLICATION FOR RENEWAL OF A HACKNEY CARRIAGE DRIVER'S LICENCE

Officer introduction

The Licensing Team Leader introduced the application as set out in the report, for renewal of a Hackney Carriage driver's licence, due to expire 25th July. The applicant did not inform the Council or declare penalty points on his renewal form.

Details of the offences are outlined in the background papers, including the interview outlining the licence holder's reasons why he did not report them to Council.

Members' questions to officer

None.

Applicant's address

Mr Layton felt sure he had informed the Council of the penalty points (for speeding), though couldn't recall if this was verbally or by phone. He said he is not very good at filling out forms, and that subsequent to the interview with Council officers, he has details of where and when the speeding offences took place.

Members' questions to applicant

In response to questions from Members, Mr Layton stated that:

- He wasn't eligible to go on a speed awareness course as he had done one just under three years previously, and drivers are only to undertake one course every three years;
- He couldn't remember whether he came to the Municipal Offices or telephoned to declare his penalty points. He was informed that if he had come into the office, he would have been given a form to fill in;
- He now understands the process, and the need to inform the Council of any penalty points in writing, witnessed by an officer.

Member debate

A member felt that a written warning should make it clear that the breach of policy – not letting the Council know – is the main issue here. In response to a question from another member, the Licensing Team Leader confirmed that the enhanced driving test is similar to a standard practical driving test, but with a higher pass threshold, and at a cost of £40-50, undertaken through the Council's supplier.

A member felt that the question is whether the applicant is a fit and proper person to drive the people of Cheltenham. He found it difficult to give credence to the applicant's story, said that taxi drivers should be reliable, and questioned whether the licence should be renewed.

Another member agreed that failing to report the offences was the main issue, and felt that a written warning would be the best option – it is not a soft option, will stay on record, and be taken into account if the applicant ever comes back to Committee. The Committee is not here to punish the applicant; if he continues to incur penalty points, he will be banned from driving.

Two members were concerned about the applicant's vagueness concerning the speed at which he was travelling. Another member asked the applicant if he had had any other speeding tickets in the 18 years he has been a taxi driver; the applicant confirmed that he had, and had been on a speed awareness course on one occasion. He also confirmed, in response to a question from a member, that he has been looking into getting cruise control fitted to his car, and will definitely have it in his next vehicle.

Applicant's response

Mr Layton agreed with all that had been said. He stated again that it was the first time he had filled out the form, and that the omission of the penalty points was a genuine mistake which he wants to rectify.

Vote:

To revoke Mr Layton's Hackney Carriage driver's licence: 1 in support, 4 in objection

To issue a written warning: 3 in support, 2 in objection

To require Mr Layton to complete and pass a driving assessment: 2 in support, 3 in objection

The Chair confirmed that the Committee won't revoke Mr Layton's licence, but issue a written warning which will stay on record. The Committee will expect Mr Layton to declare any future points, and advise his colleagues to do the same. He confirmed that Mr Layton can carry on driving, and that Officers will be in touch.

5. APPLICATION FOR RENEWAL OF PERMISSION TO PLACE AN OBJECT ON THE HIGHWAY - A-BOARD

Officer introduction

The Licensing Team Leader introduced the application for the renewal of an A-board licence at Lakeland on the Promenade, issued in October 2018 by an officer, without referring the application to Committee, which is normal procedure. An A-board at this location does not comply with policy with regard to the Council's Revised Outdoor Advertising Protocol, so officers felt it appropriate to refer the renewal application to Committee. Paragraph 3.1 of the report sets out CBC's advertising protocol, and this is the test to take into consideration.

Members' questions to officer

In response to Members' questions, the officer confirmed:

- That the A-board is within the Council's permitted dimensions;
- That another shop on the row – Slaters – has an A-board because it has no street-level frontage, and Costa Coffee opposite is allowed an A-board, although this is supposed to remain in the tables and chairs area;
- That the current licence will expire on 17th July 2019.

Applicant's address

The applicant stated that she always ensures the board is discreet and pulled in, and that it always looks professional and well done. At a time when retail is struggling, it is a helpful tool to bring customers into the store, interesting them in demonstrations and special offers. She cares passionately about her business but until she applied for the renewal, she wasn't aware that the correct procedure had not been followed.

Members' questions to applicant

In response to Members' questions, the applicant confirmed:

- That the board is currently promoting Lakeland's three-year guarantee, which is a big selling point. Promotions and demonstrations are advertised on it, but it is not changed daily;
- That it makes a big difference to displaying similar promotions in the window, as people can see it clearly from a distance.

Member debate

A member felt that the dilemma here is that Council policy does not allow A-boards to shops with street frontage, and if this licence is granted, everyone on the High Street could apply for them. Another member agreed that all businesses would say the same as the applicant, but the Council does not want the town's pavements cluttered with A-boards. He is a Lakeland customer and sympathises with the applicant, but felt that with a 14-foot frontage and no extenuating circumstances, there is no need for this renewal to be granted.

A member said that, as this A-board was permitted originally by mistake, there is no reason to deviate from licensing policy. A-boards create clutter and are trip hazards; Lakeland can promote its offers and wares in its street-level shop front window. Another member agreed that it was unfortunate that the error was made in the first place, but the Council must keep pavements safe for the visually impaired, and therefore A-boards have to be limited.

Applicant's response

Ms White understood Members' comments but, for future reference, questioned why she was sent a renewal letter when the licence had been granted in error. She has paid £125 renewal, as there was nothing in the letter to indicate the error.

The Licensing Team Leader stated that CBC was under a duty to determine the application, and to give the applicant the right to reply and option to defend the application. He confirmed that the payment would be refunded.

Vote

To grant renewal: 0 in support, 5 in objection

The Chair said that CBC will be reviewing the policy for objects on the pavement in the future, and advised the applicant that this would allow the opportunity to possibly influence policy. He apologised on behalf of the Council for the original mistake. The Licensing Team Leader confirmed that he would be in touch with the applicant to discuss what will happen next.

6. APPLICATION FOR STREET-TRADING LICENCE

Officer introduction

The Licensing Team Leader said the application is for a new street-trading consent to sell hot drinks and cakes from a coffee bike (image provided) outside 117 High Street (John Lewis plc), initially for three months, with trading hours as set out in the officer report. The assessment criteria are listed at Paragraph 3.2 of the report, with a number of objections from local traders included in the background papers. The Committee can approve if Members feel it is acceptable, or refuse if they feel it does not comply with Council policy. They should determine the application with a view to promote Council policy, and need to aware that the proposed site is not an approved location.

Members' questions to officer

None.

Applicant's address

Mr Nigel-Jones said he had done a lot of research before choosing this particular location, and opted for it because it is a much improved area, with a

wide pavement, and at a good distance from another coffee street vendor who trades outside Cavendish House.

Members' questions to applicant

In response to Members' questions, Mr Nigel-Jones confirmed that:

- He would sell organic coffee and orange juice, and organic crisps from local farmers using biodegradable packets; the coffee cups will also be biodegradable;
- There is a litter bin approximately 5 yards from the proposed pitch; he will be responsible for his own rubbish;
- The bicycle is electric and can be cycled, but he will bring it in a van, at 7.30am;
- He considered the Council's street-trading policy and other local coffee shops when doing his research, and concluded that the nearest coffee shop – Costa – would not be too worried about competition from him. He considers this location to be a good one, as John Lewis has made it an up-and-coming area, the footfall is good, there are benches and litter bins;
- The power for making coffee etc will come from a lithium battery in a sealed unit underneath the counter; other equipment is operated by gas, from a small container inside the bike;
- He applied for a three-month licence initially as he is a little worried about the winter months, and would want to discuss with the Council the possibility of a canopy or awning over the bike to protect customers from the rain. He would want to extend the licence if possible.

Member debate

A member said that, as with the previous application, the Council has endorsed a policy and it is for the Committee to enforce it. The policy does not support a bike here. Moreover, the Council has worked hard to attract John Lewis and other major retailers to the town, and spent a lot of money on public realm work in this area – it now looks good, and it would be a shame to clutter the pavement with pop-ups. He believes strongly in fair competition and attaches serious weight to the effect of this business on established businesses paying rent and rates. He will not support the application in principle.

A member commended the environmental considerations made by the applicant, but felt there are two main issues: firstly, this is not an approved area for street trading, and secondly, the Council has a duty to businesses paying rates – it must consider the needs of the area and the impact this additional business would have.

A member also liked the bike, the organic wares, and the environmentally responsible attitude of the applicant, but felt he was taking advantage of the fact that major improvements have been made in this area. It is not an approved location, and the business would be in direct competition with a number of other traders. He commended Mr Nigel-Jones for his application, but did not feel it would be supported.

A member agreed that the bike looks wonderful, complements the Council's cycling agenda, and the environmental credentials are good. He was not concerned about public safety or nuisance, but felt the application failed on two tests: first, the needs of the area – the pitch is close to several coffee shops which complement each other well – and second, it is not an approved site. He would like to see the coffee bike somewhere in town but not here.

Applicant's response

Mr Nigel-Jones took Members' points, but wondered whether this is not a designated site because it was previously untidy with poor footfall. Now that money has been spent, it could become a designated location and would complement the area.

Vote

To approve the application

0 in support

5 in objection

REFUSE

The Chair confirmed that the Committee likes the appearance and environmental credentials of the business, and have refused because it is not compatible with the policy needs of the area. He thanked the applicant, and suggested he speak with the licensing team outside the meeting to consider other locations.

7. APPLICATION FOR A VARIATION OF A SEXUAL ENTERTAINMENT VENUE LICENCE

Officer introduction

The Licensing Team Leader told Members that the current SEV at the Two Pigs will expire early in 2020, and that the scope of this application relates only to a variation – additional dates to coincide with race meetings in October, November and December. There have been two objections, as set out in the report, but no comment from the Chief of Police. Mandatory and discretionary grounds for refusal are detailed in the report at Paragraphs 4.4 and 4.5, and Members should also be mindful of their public sector equality duty and the effect of granting this application on the protected group as set out in 2010.

Questions to officer

In response to Members' questions, the Licensing Team Leader confirmed that:

- The application is in line with previous applications from this applicant for sexual entertainment at this venue. It is used as a SEV at most major race events.
- Police and Council licensing officers inspect the venue once or twice a night during race events and, apart from some minor issues, no comments or concerns have been raised;
- The venue is inspected every six months or so, outside the SEV dates when operating as a normal pub
- No sexual assaults or incidents attributable to Two Pigs customers have been recorded by the police.

The applicant had no questions for the Licensing Team Leader at this point.

The representative of GRASAC asked what the link is between sporting events and sexual entertainment in Cheltenham; this doesn't occur in other cities. The Licensing Team Leader stated that it dates back to when the Blue Rooms operated as a permanent SEV in Cheltenham. In 2011, a statutory exemption allowed premises to put on sexual entertainment once a month without a licence. There is nothing the Council can do about it, but if premises want more than one night a month, as in the case of the Two Pigs, they need to apply for a licence.

Applicant's address

The applicant's solicitor confirmed the additional dates and times requested: Friday 25th and Saturday 26th October; Friday 15th, Saturday 16th and Sunday 17th November; and Friday 13th and Saturday 14th December, all 8.00pm to 5.00am. The Licensing Team Leader confirmed that these are the dates on the application form.

The solicitor said the licence has been held since January 2017; when it was originally applied for, a number of objections were raised but none have been raised since then. As stated by the Licensing Team Leader, there have been no issues or objections from the police, and only very minor incidents have occurred which have been fully resolved to the satisfaction of the police and local authority. The applicant respects the local area and actively participates in the Cheltenham NightSafe scheme, which is linked with the police and aims to reduce crime and anti-social behaviour.

The application has been properly advertised, and copies of the public notice are available.

Regarding the objections raised, Members will be fully aware of the mandatory and discretionary grounds for refusal; objections on moral grounds or values are not relevant and should not be taken into consideration. The objection from GRASAC concerning a serious sexual assault during race week cannot be attributed to the applicant and should be disregarded.

The Two Pigs is a professionally-run establishment, which strives to comply with its licensing commitment, and work with police to ensure that individuals abide by the rules and do not cause a nuisance in the local area. Welfare of performers is paramount, and they are transported to and from the venue, provided with meals and refreshment, and secure changing rooms. There are no webcams or chat services.

Concerning the objection from a local resident, the police and local authority work to safeguard the streets, and have raised no objection to the licence at the Two Pigs. If there were any anti-social behaviour or disorder issues, the police would have been present at the meeting or made a comment; this contradicts and outweighs the resident's objection. The comments about the 24-hour exemption are a matter for judicial review at the High Court.

This is a straightforward application: the applicant has had an excellent record for 2.5 years; the police have no objections; public objections have no merit in law; all licensing regulations are observed.

Questions to applicant

In response to Members' questions, the applicant's solicitor confirmed that:

- Employees are not coerced or trafficked; they apply online, and once approved, need to confirm their status, address, and right to work in the country;
- There is racing on Sunday 17th November;
- Regarding the barriers placed on the highway, conditions are attached to the original licence and the local authority has not raised any objections to suggest that these have been breached;

- Fliers handed out during raceweek offer a free courtesy bus; the local authority has not raised the issue, so the assumption is that they do not breach the conditions;
- Additional bar staff are provided through Griffin Promotions; individuals who are contracted to work at the venue are fully briefed as to what the event will be and what they will be expected to do;
- Performers come from all across the country, and usually stay in hotels in Cheltenham or Gloucester; they are dropped off at their hotels or their vehicles.

Regarding the barriers, the Licensing Team Leader said that Condition 4 relates to the display of banners in the immediate vicinity, and the issue is that venues use barriers during busy raceweek events to manage crowd control. Officers have had conversations with the police and the operators, who state the barriers are necessary to manage queues, crime, disorder, flashpoints. The barriers used here display the Eroticats logo - nothing to suggest lap dancing, but to some extent the imagery could be interpreted as a breach. This could be tightened up under a policy review.

Regarding the fliers, Condition 6 concerns advertising the premises and also needs tightening up; the fliers advertise the courtesy bus, so technically are not in breach. With the imagery and barriers, the applicant is circumnavigating the rules; this will be picked up. He confirmed that, if acting under the 24-hour exemption, barriers are permitted but leafleting requires a separate permit.

The Licensing Team Leader reminded the Committee that the application is a variation of an existing licence and the Committee's decision making remit is limited to the variation applied for and cannot extend to a full review of the SEV already issued.

The representative from GRASAC asked what the Council is doing generally about the safety and safeguarding of residents in the area. The courtesy bus has been seen near schools, and Two Pigs workers and ex-workers have told GRASAC that they have been dismissed during raceweek. The applicant said this is not the case, and suggested it is not relevant to the application.

Objector's address

Ms Steward said GRASAC works in tandem with Council members and staff and the police, to protect the safety of women – posters were produced this year – yet this seems to contradict the work which other Council departments are doing. She questioned again the link between sporting entertainment and the sex industry, and while recognising that the law has been in place since the 1980s, and that the Committee is not here to discuss morals, she felt that additional dates on the licence, in this sensitive area near St Mary's, St Matthew's and St Gregory's, could be refused as unsuitable, based on the clientele.

Questions to objector

Members agreed that GRASAC does very good and valuable work, but reminded the objector that tonight they are considering only the amendment to an existing consent; they can only apply the law and policy as it stands, and while they can change policy in future, they cannot change the law. It was also pointed out that any link between sport and sexual entertainments has nothing

to do with the application, and that, as stated earlier, Cheltenham has just won a Purple Flag for its management of the night-time economy.

In response to questions from Members, Ms Stewart stated that:

- Although the serious sexual assault during raceweek cannot be directly linked to the Two Pigs, women's safety during raceweek in general is a concern. The police say nothing was reported to them, but GRASAC has clients who say they tried to report incidents to the police and were told they should expect it in raceweek. GRASAC holds a lot of client information about safety or lack of it during raceweek;
- The courtesy bus has been seen near Cheltenham Ladies College during the evening – not near any primary schools – but many local residents find it offensive;
- By increasing the dates or not, Councillors can influence the ongoing link between race events and the sex industry, which is not prevalent elsewhere;
- She recognises that, if the licence variation is refused tonight, sexual entertainment will continue elsewhere in the town, without the protection for performers provided by the large number of conditions on the Two Pigs licence. However, she is interested in the safety of all women in the town

The applicant had no questions for Ms Stewart.

Member debate

A member asked for clarification as to whether this is an amendment or a new application. There are no more race meetings left on the original application, but three between now and January. The Licensing Team Leader confirmed that the Two Pigs has a licence to January 2020, with certain dates permitted; tonight's application is just about adding three more sets of dates. Matters relevant to the discretionary grounds for refusal of the venue can be raised when the licence is renewed later this year.

A member said there may or may not be a link between sex and sport, but this is not peculiar to Cheltenham and cannot be blamed on the Two Pigs. There are problems in town and in society which need to be dealt with, but this amendment to an existing consent won't make a difference. The issue of SEVs won't go away, and in granting a SEV licence, the venue can be better controlled by licensing officers and the police, making it better for performers and for audiences. If it goes underground, there would be no control.

A member suggested the link between racing and sexual entertainment arose from the link between racing and gambling, and a lot of people with money to burn. She agrees that, as a woman, it can be very unpleasant walking through town during raceweek, but this cannot be blamed on one SEV. She was shocked to hear that women have had trouble reporting incidents to the police, but that is not relevant to this licence. The Committee has very limited ability to refuse: the licence is already granted; this is an amendment; the locality was considered acceptable when the licence was granted, and this is not the place to object to that. It is up to people to choose whether they go to SEVs; doing so does not make them guilty of assault, and at least with a licence, conditions are in place to protect workers and audience.

A member suggested that the correlation between sport and SEVs could just be that a lot more people need entertaining and part of this is drinking and

attending lap-dancing clubs. Under the 24-hour exemption, any pub or club can put on unregulated sexual entertainment, and it is better to contain the dates by licence. He agreed with other Members that any attacks or anti-social behaviour from drunken people cannot be attributed to a single establishment.

A member also admires the work done by GRASAC, and appreciates their concerns, but repeated that the Council is limited by national legislation – lap-dancing is legal, and people who do not like it should talk to their MP about changing the law; otherwise the Council will always be constrained in the way it can act. He agreed with other Members that it is better to have some control over premises, and felt that the Two Pigs is a good-quality venue.

He was concerned, however, about the barriers and fliers, and felt that the will of the Committee has been legally and cleverly circumvented. Fliers cause a lot of litter and barriers block the highway. He recalled that the main issue when the original licence was granted was preventing any advertisements being posted on the wall outside, and feels uncomfortable doing nothing about the barriers and leaflets.

A member said racing brings in a lot more people than it used to, and this is reflected in the venues. He said that barriers are normal for crowd control, but questioned why those used at the Two Pigs need to be branded. To keep things in perspective, however, he reminded Members that there are more issues and complaints about taxi drivers than SEVs during raceweek.

A member said that the police would have raised concerns if they had any, and that the Two Pigs is inspected every night during race events. He agreed that sexual entertainment is not linked so much to sport as to large numbers of people with lots of money to spend, and pointed out that many large cities have permanent SEVs so do not need additional venues during sporting events. He reminded Members that the important thing is that the performers and clients are safe, and the fact that people are offended by it is not grounds for refusal – discretionary grounds were considered when the application was originally considered. Moral objections are not a reason to refuse, and the Council itself has allowed the Dream Boys to perform at the Town Hall using the 24-hour exemption.

He said that concerns about the safety of the town are more about the number of people in raceweek. There are objectionable people in any large town on a Friday night, but at least the licensed venue will have more door staff, regulation and inspections because of its high profile; the general consent is that the Two Pigs operates within its licence, and if performers were coerced, it would be evident. The objections raised are not material, and issues regarding the 24-hour exemption need to be raised with Parliament. He wants Cheltenham to be safe for everyone and the Council has done all it can. The Two Pigs cannot be held responsible for anti-social behaviour, only for its immediate vicinity. There is no rational reason to refuse.

A member noted that the application is being determined under CBC's existing licence policy, and asked when the reviewed policy would come into force. The Licensing Team Leader said this will involve scrutiny work, a 2-3 month consultation, cabinet approval and then implementation – it will not happen before Christmas. He added that leafleting is subject to separate licensing permission, and needed a permit under the Environmental Protection Act, with a

separate set of conditions (leafleters are not allowed to force their leaflets on people and are required to clear up any mess). The Two Pigs is no worse than any other night club in this respect. He also said that obstruction of the highway is also covered by separate legislation.

The applicant had no further comment.

Vote

Grant the application as applied for: 5 in support - unanimous

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

None.

David Willingham
Chairman