

LICENSING AND REGULATORY SUB-COMMITTEE

WEDNESDAY, 3 APRIL 2024

Present:

Councillors Hayes (Chair), Peart and Rollason

Apologies:

Councillors Atkins

Officers in Attendance:

Licensing Officer

Legal Assistant

66. APOLOGIES

Apologies received from Cllr Atkins.

67. DECLARATIONS OF INTEREST (IF ANY)

None.

68. MINUTES

The Minutes of the meeting held on 8 February 2024 were approved as a correct record and signed by the Chair.

69. APPLICATION FOR A NEW PREMISES LICENCE - HEARN FIELD AND PAVILION

The Sub-Committee gave consideration to a report presented by the Licensing Officer (previously circulated) in which determination was sought in respect of an application for a new Premises Licence for Hearn Field and Pavilion, Shaldon Road, Combeinteignhead, Newton Abbot, TQ12 4RR.

Representatives for the Applicant attended the meeting and were permitted to speak. The representatives answered questions put to them by the Sub-Committee.

Persons who had submitted representations also attended the meeting and were permitted to speak.

Arising from consideration of the report, evidence presented and in accordance with the relevant provisions of the Licensing Act 2003 Statutory Guidance, and the Council's Licensing Policy, it was moved by Councillor Hayes and seconded by Councillor Peart, and

RESOLVED that the Application for a new Premises Licence in respect of Hearn Field and Pavilion, Shaldon Road, Combeinteignhead, Newton Abbot, TQ12 4RR be refused under Section 18(4)(d) of the Licensing Act 2003.

Reasons for the decision:

The Sub-Committee heard from representatives for the Objectors who explained that whilst they did not object to the Parish Council holding occasional events using Temporary Event Notices and could tolerate the noise and disruption during these times, the idea that events could significantly increase causing further disruption would be intolerable.

The Objectors' main concerns were:

- public nuisance from increased footfall and excess noise from the events being held.
- concerns over the prevention of crime.
- concern that the conditions included within the application were so vague, had no clear parameters or function and so in reality, would be unenforceable. Consequently, residents would have no recourse if issues were to occur.
- that the public open space was actually a registered village green and would become inaccessible due to proposed ticketed events being held. The residents understood that the Parish Council needs to raise money to assist with the upkeep of its assets, this should not be at the detriment to those who have the right to use the field for everyday recreation.
- that a full consultation relating to the premises licence application had not been held or properly articulated by the Parish Council to residents who lived next to the field and surrounding area.
- that previous complaints to the Parish Council following problems caused by previous events had been ignored.

The residents did not believe that the Parish Council were experienced enough to uphold any of the four licensing objectives whilst holding regular large-scale events. The objectors felt that the Parish Council were simply applying for the licence to avoid the inconvenience of applying for regular Temporary Event Notices without fully considering the responsibilities that come with being a premises licence holder.

The Sub-Committee then heard from the Applicant's representative who responded to the comments made and set out the following:

- The need to maintain the field for residents and that this costs money. No provision of funds for maintenance of the field was given when the land was gifted to the community.
- it was felt that an application for a premises licence would stop the need for repeat TENs applications and would also remove the limit of 499 people. It was then stated that keeping an eye on numbers was, and is, an onerous task and proves difficult when trying to run an event whilst allowing the general public access the village green.

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- This is a community focused application to serve the needs of the community and raise funds for the upkeep of the area.
- The application has not primarily been submitted to allow for the sale of alcohol but by including alcohol the Parish Council have flexibility in the type of events they can hold.
- There are no intentions to start running events in a commercial manner and positive feedback has been received from the events held previously.
- Risk assessments and volunteer briefs were completed for events, and all necessary insurances were in place.

In response to questions the Parish Council explained:

- Estimated they will only hold around 6-9 events per year along with 4 weddings. There are no plans to increase the number of events extensively.
- All ideas come to the Hearn Field committee, and these are then put to the main Parish Council for approval during public meetings where the public can express any concerns.
- The Parish Council do not have the capacity or intention to run a bar 7 days a week but would like the flexibility to do so. The Parish Council did not intend for the premises licence to apply to weddings.
- The Parish Council representative acknowledged there were concerns over noise and confirmed that they had received advice from Environmental Health which they have taken onboard.
- Noise will be minimised by ensuring speakers are faced away from the outside of the field and will have a member of the Parish Council making sure music is turned off at the appropriate time.
- It was not accepted that complaints had been ignored but confirmed that there had been some previous issues with events. These have been learnt from and addressed going forward.

The Parish Council's representative confirmed in response to a question from the Legal Adviser that the applicant was the Hearn Field Committee a separate properly constituted body. Therefore, the Licensee would not be the Parish Council but the Hearn Field Committee. This meant that the application form and the subsequent representations from the Parish Council were misleading to both the Licensing Sub-Committee and members of the public. The Hearn Field Committee would be bound by the licence but not the Parish Council. The Parish Council representative said the intent was to be the Parish Council and they do not feel this materially changes the application but accepted this could be misleading.

The Sub-Committee having considered the application submitted and having heard from those present and being mindful of Statutory Code of Guidance and Licensing policy, felt that on balance it could not approve this application as it appeared to be confused, ambiguous and lacking meaningful and therefore enforceable conditions, such that the licensing objectives would be at risk of not being upheld.

The Sub-Committee were also concerned over the ambiguity of the applicant and the possibility of competing or conflicting interests between the Parish Council and the Hearn Field Committee, along with the difficulties this could cause if it came to enforcing any licence granted. The Sub-Committee had concerns that the applicant did not fully understand the scope of the licence applied for and as a consequence, the

applicant had not properly considered the licensing objectives and/or its obligations in respect thereof or, what impact the nature of the premises may have.

The Sub-Committee was not satisfied that the four Licensing Objectives would be upheld and therefore deemed it appropriate to refuse the premises licence.

70. REQUEST FOR PRIVATE HIRE VEHICLE LICENCE FOR VEHICLE OVER 5 YEARS AND SMALL PLATE REQUEST - LM06 HUM

The Licensing and Regulatory Sub-Committee was asked to consider an application for a Private Hire Vehicle Licence and small plate request for a Hummer vehicle registration LM06 HUM.

The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in February 2025, with no advisories and that the vehicle passed its annual taxi inspection test on 19 February 2024 with no advisories. The Applicant was unable to be in attendance.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the new Private Hire Vehicle Licence without the need to be presented before the Sub-Committee for 3 years with the additional condition of 6 monthly taxi inspection tests due to the age of the vehicle and being a specialist vehicle.

Section 48(4)(c) of the Local Government (Miscellaneous Provisions) Act 1976 provides for a licence granted to remain in force for a period not being longer than one year. Therefore, the Private Hire Licence Extension will be determined by a Licensing Officer annually without the need for the vehicle to be brought before the Sub-Committee for 3 years. The Sub-Committee also granted the request for a small plate due to the nature of work the vehicle will be used for such as weddings.

71. REQUEST FOR PRIVATE HIRE VEHICLE EXTENSION FOR FURTHER 12 MONTHS - KLZ 1117

The Licensing and Regulatory Sub-Committee was asked to consider an application for a Private Hire Vehicle Licence Extension for a Chrysler 300 C vehicle registration KLZ 1117.

The Sub-Committee noted the information provided by way of the report. In particular the Sub-Committee noted that the vehicle's MOT certificate expires in November 2024, with no advisories and that the vehicle passed its annual taxi inspection test on 26 March 2024 with no advisories. The Applicant was unable to be in attendance.

The Sub-Committee were satisfied that the vehicle was in a good and sound condition and that public safety would not be compromised by the granting of the licence sought.

Decision

Accordingly, the Sub-Committee granted the Private Hire Vehicle Licence Extension for 12 months as detailed in the report with the additional condition of 6 monthly taxi inspection tests due to the age of the vehicle.

72. REVIEW OF A SMALL PLATE FOR A PRIVATE HIRE VEHICLE - CR15 KHO

The Licensing and Regulatory Sub-Committee was asked to review whether a small plate should continue to be allowed to be displayed.

The Sub-Committee noted the information provided by way of the report and heard from the Licensing Officer that the vehicle had been brought to the committee due to the vehicle having been seen without its taxi plate on two occasions. The plate should only be removed with the express permission of a Licensing Officer, and they had not received a request for its removal.

The vehicle owner who was in attendance clarified that the small plate sticker had been attached to a magnet to avoid damage to the bodywork of the car. This had been removed before going through the car wash and the owner had forgotten to put it back in place. The other time that the sticker had been removed was prior to the applicant going on holiday for two weeks. The vehicle would be left in a busy public car park, and they were concerned about the risk of vandalism if the vehicle stood out as being a licensed vehicle. It is the owner's personal vehicle and only used occasionally for private hire jobs. The owner apologised and said they did not realise that a request could be put to the licensing officers for permission to temporarily remove the plate and they would ensure this was done going forward if removal was required again.

Decision

After some discussion the Sub-Committee were satisfied that public safety would not be compromised by continuing to allow the vehicle to display a small plate. Accordingly, the Sub-Committee unanimously agreed that the vehicle continue to be allowed to display a small plate but stressed that this had to stay on the vehicle unless given permission from the Licensing team that it could be removed. Should the vehicle not display the small plate appropriately then the matter would be brought back to committee for review.

73. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - EXCLUSION OF PRESS AND PUBLIC

RESOLVED that, under Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following items on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1,2 and 5 of Part 1 of Schedule 12A of the Act.

74. APPLICATION FOR COMBINED HACKNEY CARRIAGE/PRIVATE HIRE DRIVERS LICENCE

The Sub-Committee gave consideration to a report presented by the Licensing Officer (previously circulated) in which determination was sought in respect of an application for a new Combined Hackney Carriage/Private Hire Driver's Licence.

The Applicant attended the meeting in person, and he answered questions put to him by the Sub-Committee.

Arising from consideration of the report, evidence presented and in accordance with the Council's procedure for hearings, it was moved by Councillor Hayes and seconded by Councillor Peart, and

RESOLVED that the application for a new Combined Hackney Carriage/Private Hire Drivers Licence be granted for 12 months under Section 53 (1)(a) and Section 53 (1)(b) of the Local Government (Miscellaneous Provisions) Act 1976. The Sub-Committee felt that the conduct of the Applicant as set out in the Report, supported its view that the Applicant was a fit and proper person to hold such a Licence.

Reasons for the decision:

Members noted the information set out in the Report relating to the Applicant's conviction for driving with no insurance and the reasons why the application for a licence had been refused by the Licensing Manager. The Sub-Committee noted that the Applicant's conviction is considered relevant as the driving of taxis is a 'Regulated Occupation'. As such questions may be asked as to the suitability of an individual to be granted a licence.

In answer to the Sub-Committee's questions the Applicant explained that he had received the 6 points for driving a vehicle uninsured against third party risks. The Applicant had borrowed a friend's car to deliver food. The Applicant had his own insurance and trusted his friend's word that the borrowed car was also insured. The Applicant was stopped by the police shortly after starting to drive and informed that the borrowed car was uninsured. The Applicant did not go to court and received 6 points and a fine. The Applicant accepted that looking back he should have checked the car was insured before driving but he trusted his friend and feels completely let down by him and he has not spoken to this person since. The Applicant confirmed that he has always had his own insurance and would always check properly before driving a car that is not his in future.

When considering the Council's Licensing Policy, the sub-committee were mindful that each case must be decided on its own merits. The Licensing Manager considered driving with no insurance to be a major offence under the Council's Licensing Policy. Usually, an isolated incident would merit a warning, but the Licensing Manager felt that the driver had failed to show due diligence to protect both himself and members of the public and as such was not a fit and proper person to hold a licence.

The Committee thanked the Applicant for appearing before them and noted that he appeared remorseful and regretted what had happened. The Applicant has been upfront about his conviction and, after hearing the Applicant's submissions, the Sub-Committee felt that this indicated that he was a fit and proper person to hold a licence.

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The Sub-Committee noted its overriding duty to the public, and of the importance of public safety but considered that, on balance, there was no cause to show that the Applicant was not a fit and proper person to hold a Licence.

Applying the test of whether Members of the Sub-Committee would be happy for a person they cared about or a vulnerable person to travel alone in a vehicle with the Applicant, it was concluded after significant deliberation that they would.

Taking the Council's Licensing Policy into consideration, along with the Applicant's submissions, the Sub-Committee considered given the circumstances of this case that it be reasonable to approve the Applicant's application for a new combined Hackney Carriage/Private Hire Drivers Licence for one year following receipt of all necessary paperwork by the Licensing team.

The Sub-Committee noted that the applicant had applied for a three-year licence however felt that as the offence was still relatively recent having taken place in November 2022, and he still had 6 points on his licence which do not expire until November 2025, along with being a new applicant, it would be reasonable to grant the licence only for a year which can then be reviewed upon reapplication.

The Sub-Committee stressed that should there be any concerns raised about the Applicant's conduct he could be brought back before the Sub-Committee.

Cllr R Hayes
Chair