

LICENSING AND REGULATORY SUB-COMMITTEE

MONDAY, 30 SEPTEMBER 2024

Present:

Councillors Bradford, Hayes (Chair) and Rollason (Vice-Chair)

Officers in Attendance:

Licensing Officer

Legal Assistant

120. APOLOGIES

None.

121. DECLARATIONS OF INTEREST (IF ANY)

None.

122. MINUTES

The Sub-Committee noted that there was an error in the Minutes from the previous meeting attached to the agenda which incorrectly recorded the date of the meeting held on the 31 July 2024 as the 30 July 2024.

It was proposed by Cllr Hayes and seconded by Cllr Bradford that the Minutes of the meeting held on the 28 August 2024 be approved with the amendment made to the date on the printed public minutes. The minutes were therefore unanimously approved as a correct record and signed by the Chair.

123. REQUEST FOR HACKNEY CARRIAGE VEHICLE OVER 5 YEARS - DA17 WTF

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 March 2025, with no advisories and that the vehicle passed its annual taxi inspection test on 13 September 2024. The Applicant was in attendance and answered questions put to them by the Sub-Committee.

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 Hackney Carriage Vehicle Licence as detailed in the report with the additional condition of a six month vehicle test to monitor the condition of the vehicle due to its age.

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

It was proposed by Cllr Hayes, seconded by Cllr Rollason and unanimously agreed that the meeting move into Part II for the next agenda item.

125. 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 Vehicle Driver's Licence.

The Applicant attended the meeting in person and 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 Rollason, and

RESOLVED that the application for a new combined Hackney Carriage Vehicle Drivers Licence be granted under Section 51 (1)(a) and Section 59 (1)(a) of the Local Government (Miscellaneous Provisions) Act 1976. The Sub-Committee felt that the conduct of the Applicant as set out in the Report and supporting documents, along with representations made, supported its view that they are 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 or attempting to drive with alcohol level above limit in February 2020, along with the current licence endorsement for exceeding the speed limit on a motorway in January 2022. The Sub-Committee noted that the convictions are 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. The Sub-Committee were also informed that the Applicant had disclosed one of two convictions on his application.

In response to questioning the Applicant explained to the Sub-Committee that he had disclosed the two convictions but for some reason one had not shown up, he is unsure why but there was no intention to mislead the Licensing Officers.

The Applicant further went on to explain the reasons for his conviction for driving or attempting to drive with alcohol level above limit. He had been drinking the night

before and was stopped by police the following morning for being over the limit. He received a fine and disqualification for 17 months and the length of disqualification had been reduced following the completion of a course. The Applicant said this course had opened his eyes to the seriousness of what he had done even if this had been unintentional.

The Sub-Committee heard that the conviction has changed his whole life, and he deeply regrets what happened. He lost his job as a taxi driver and now very rarely drinks. He also has a daughter to support along with his partner and he wants to find better paid and more stable work to be able to do this which is what he hopes the taxi driver's licence will provide.

The Sub-Committee thanked the Applicant for appearing before them and for answering their questions. The Sub-Committee noted the Applicant's history and that the offence had happened in 2020. They accepted that he appeared to be remorseful, had not intentionally set out to drive whilst over the limit and had completed the period of disqualification along with an additional course to reduce this sentence. Other than the one offence of speeding in January 2022, there have been no other causes for concern raised. The Sub-Committee understood that he had previously worked as a taxi driver and wanted to get back to a career he enjoyed and feels he is good at. Whilst a person's livelihood and impact on family is not a consideration to be taken into account, the Sub-Committee could understand the Applicant's desire to rebuild his life and move forward.

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 be. The Sub-Committee noted its overriding duty to the public, and of the importance of public safety and considered that, on balance, there was no cause to show that the Applicant was not a fit and proper person to hold a Licence. The Sub-Committee considered Government guidance along with guidance from the Institute of Licensing that a licence not be granted until at least 7 years have elapsed since the completion of any sentence or driving ban, but felt on this occasion the Applicant had shown sufficient remorse and understanding of the severity of the offence committed, along with completing the necessary course to educate himself to avoid making the same mistake again and to reduce his driving ban.

The Sub-Committee therefore considered given the circumstances of this case that it be reasonable to grant the Applicant's request for a new combined Hackney Carriage / Private Hire Drivers Licence. The Sub-Committee stressed to the Applicant that if there was any cause for concern then he could be put back before the Sub-Committee and have his licence reviewed.

126. LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 - INCLUSION OF PRESS AND PUBLIC

It was unanimously agreed that the meeting move back into Part I for the remaining agenda item.

127. APPLICATION FOR A NEW PREMISES LICENCE – BASKERVILLES ICE CREAM PARLOUR AND COFFEE SHOP

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 Baskervilles Ice Cream Parlour and Coffee Shop, 2-4 Ford Street, Moretonhampstead, TQ13 8LN.

The Applicant attended the meeting and was permitted to speak and also answered questions put to them by the Sub-Committee.

A representative for those who had submitted representations also attended the meeting.

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 Rollason and seconded by Councillor Hayes, and

RESOLVED that the Application in respect of a new Premises Licence for Baskervilles Ice Cream Parlour and Coffee Shop, 2-4 Ford Street, Moretonhampstead, TQ13 8LN be granted for the supply of alcohol for consumption on the premises with food but with the following amendments to the hours requested:

Monday to Saturday 10am-7.30pm
Sunday 10am-4.30pm

Reasons for the decision:

The Sub-Committee heard from the Licensing Officer who confirmed that the application had been submitted to allow the supply of alcohol for consumption on the premises 7 days a week. The 9 representations received related mainly to the protection of children from harm, public safety and the prevention of public nuisance specifically an increase in noise.

The Sub-Committee then heard from the Objectors' spokesperson who stated some had been too scared to speak up. Objectors are primarily concerned with the impact the noise will have on the surrounding residential homes. The premises is surrounded by stone walls and noise is amplified and reflected back from other tall buildings. This is further exacerbated in the evening when it is naturally quieter and there is a concern that people having consumed alcohol will make the premises louder still. The Objectors' spokesperson believes that effective mitigation has not been submitted by the applicant to address these concerns as the only mitigation mentioned is a reference in the application to staff being trained.

Objectors are also concerned about the safety of children and the potential for issues to be caused from alcohol being served where ice cream is also served to children. The spokesperson also mentioned the risk of drunk customers wandering out of the premises into traffic as there is no pavement and only a swing gate and

low wall to separate people from the road. There were further concerns that the building could pose a safety risk to the public as it was not believed building regulations had been signed off for the works undertaken.

The spokesperson continued and explained to the Sub-Committee that it is felt the Applicants are trying to circumvent the planning restrictions put on the property by Dartmoor National Park relating to the hours that outside drinking and eating is allowed by applying for longer hours on the premises licence.

There were also further allegations that the Applicants have been speaking to those who had submitted representations and making them feel intimidated if they do not agree to withdraw these. There has been no open communication between the Applicants and local residents to find a common ground, and those who have submitted representations feel they have been treated with contempt.

The Applicant's representative then spoke in response to the allegations and confirmed that there is misinformation being spread and whilst they understand the objectors' concerns, there is also a lot of support within the village for this application. The area relies heavily on tourism and the Applicants are looking for ways to cope with the loss of trade during the winter. The parlour also supports the local post office to stay open and its supporters are the silent majority. There are pubs and restaurants already within the vicinity of the Objector's houses. It is not an unsafe premises; the garden is enclosed, and other local pubs also open directly onto the road. It is felt by the Applicants that the objections are a personal attack as similar licensed premises do not seem to attract the same objections.

When questioned if they had approached objectors the Applicant confirmed she had but denied this was meant to intimidate. She approached only to discuss the food that would be served and to reassure that any smells shouldn't affect them due to the proximity of the Objector's garden. She had also approached another Objector to discuss the allegations that she felt were slanderous and she wanted to get to the bottom of. The Applicant also stated she had monitored noise and smell in the neighbouring streets to see if there was an issue but there did not appear to be any.

In response to further questions the Applicants confirmed that they do not want to be able to provide off sales, they just want the option to serve alcohol with meals, including lunches, which they now have the correct planning permission for. Currently the food they offer are curries and similar and they are expanding this depending on client wants. The hours applied for are different to those set out in the planning permission as they will be looking to apply to vary the planning permission in due course and were trying to avoid the need to submit a further application to vary the premises licence.

The Applicant also confirmed that they had the necessary sign off from building regulations for the works that had been completed which include new electrics, a new roof and toilets. The garden itself is walled with astroturf and it is not felt that noise from the garden is excessive. The Applicant noted that they did not have the

correct planning permission when the last premises licence application was submitted but they now do.

The DPS was then permitted to speak to the Sub-Committee and confirmed that she and her partner have 25 years' experience of working in and running licenced establishments. They have been trained by big companies such as Wetherspoons and have won awards for standards. Her partner is also door trained. Customers will be told to keep the noise down and the DPS has no concerns with ensuring this happens.

A licensing policy has been written for the premises and all staff will be trained and expected to adhere to this. Currently there are 5 staff members and no concerns about their ability to learn and implement the rules. In summer it is likely they will employ more people and again they will be properly trained. Further mitigations to protect children are that there will be a drinks list to order from when ordering a meal and no alcohol in open fridges. They are also considering not allowing children onto the premises without an adult in the evening. The applicants will adhere to challenge 25, look to take bookings and also undertake toilet checks. Any disruptive behaviour would be dealt with straight away. There are also no plans to have music playing which will help to mitigate noise levels. It is believed a well-managed premises will attract well-mannered people.

The DPS also stated that they do not expect to be open for the entirety of the hours that have been applied for, especially in winter, but it provides flexibility should they wish to.

The Sub-Committee thanked the Applicant for attending and answering their questions. They felt that the Applicant had shown they were trying to become a more diverse and viable business, especially during the winter months and had put thought into the application and how they can mitigate the perceived risks such as with producing their own licensing procedure. The Sub-Committee considered that currently there is outside seating that customers use and did not feel that the provision of alcohol with meals seemed likely to result in large numbers of additional people outside making noise. The Sub-Committee also noted that planning permission had been granted for outside eating and drinking until 9pm and felt that refusing the licence completely would be in conflict with this.

The Sub-Committee noted the concerns of the persons who had submitted the representations and empathised that living near a licensed venue could have the potential to be noisy, especially with the outside area. However, the premises is within the town centre, and it is impossible to mitigate against all noise levels. The planning permission, although not a material consideration, has already limited outside eating and drinking to between the hours of 9am and 9pm and it was felt that applying further conditions to the licence sought could also go towards providing mitigation for the residents whilst allowing the Applicant the licence.

The Sub-Committee further noted that the actual opening hours of the premises are likely to be less than those applied for within the licence. Taking this into consideration it was felt a condition restricting the hours the premises is licenced for

could provide mitigation and compromise for both the Applicant and the residents, noting that one objector had suggested limited hours could be considered acceptable. They were impressed by the DPS and felt that they seemed credible and experienced in running licensed establishments and could effectively uphold the licensing objectives. As such the Sub-Committee felt that the impact on neighbours is likely to be less than feared.

The Sub-Committee also felt that the Applicant and the DPS in particular had shown they had thought about ways to mitigate against the children coming to harm by not having alcohol on sale openly and potentially limiting their access to the premises in the evenings unless with an adult. The premises' main function is not the sale of alcohol and so the Sub-Committee did not feel it appropriate to apply conditions limiting children's access to the premises itself.

With regard to public safety, it was not felt that it was reasonable to condition this. Once customers have left the premises, it should not be for the licence holders to be responsible for their actions. The outside space is separated from the road by a wall and gate, and it was difficult to see how this could be conditioned to protect the public from a possible risk of passing traffic when they leave.

There had also been no objection to the application from the responsible authorities and the conditions suggested by the Police had been agreed. Should there be any issues in the future then residents are able to contact the Council and put a complaint in using the relevant processes and the Sub-Committee felt that this provided sufficient recourse if required.

The Sub-Committee did note the allegations of intimidating behaviour but felt they could not take this into consideration as this is a private matter and should be reported to the appropriate authorities as necessary.

The Sub-Committee having considered the application submitted and having heard from those present and being mindful of representations and Statutory Code of Guidance and Licensing policy, felt that on balance it could not refuse this application but did feel it necessary to condition the application in the interests of mitigating the risk of Public Nuisance to the surrounding neighbours by reducing the amount of hours the premises can sell alcohol.

The Sub-Committee were satisfied that the Applicant was suitably experienced and would be able to promote and uphold the four Licensing Objectives and therefore deemed it appropriate to grant the premises licence but with an additional condition of reduced hours for the sale of alcohol for consumption on the premises with food.

Cllr R Hayes
Chair