



Wednesday, 26 September 2018

## **LICENSING SUB-COMMITTEE**

A meeting of **Licensing Sub-Committee** will be held on

**Thursday, 4 October 2018**

commencing at **9.30 am**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,  
Torquay, TQ1 3DR

### **Members of the Committee**

Councillor Stocks

Councillor Thomas (J)

Councillor Tolchard

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**A prosperous and healthy Torbay**

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For information relating to this meeting or to request a copy in another format or language please contact:

**Lisa Antrobus, Town Hall, Castle Circus, Torquay, TQ1 3DR**  
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# LICENSING SUB-COMMITTEE AGENDA

1. **Election of Chairman/woman**  
To elect a Chairman/woman for the meeting.
2. **Apologies**  
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Minutes** (Pages 4 - 7)  
To confirm as a correct record the Minutes of the meeting of a Sub-Committee held on 9 August 2018.
4. **Declarations of interests**
  - (a) To receive declarations of non pecuniary interests in respect of items on this agenda  
**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
  - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda  
**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.  
  
(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
5. **Urgent items**  
To consider any other items that the Chairman decides are urgent.
6. **Consideration of an Application for a New Hackney Carriage Vehicle Licence** (Pages 8 - 12)  
To consider an application for a New Hackney Carriage Vehicle Licence, where the application does not meet the requirements set out in Torbay Council's current Hackney Carriage (Taxi) and Private Hire Licensing Policy 2016 (the Policy).

**7. Consideration of an Application for a New Hackney Carriage Vehicle Licence**

(Pages 13 - 17)

To consider an application for a New Hackney Carriage Vehicle Licence, where the application does not meet the requirements set out in Torbay Council's current Hackney Carriage (Taxi) and Private Hire Licensing Policy 2016 (the Policy).



## Minutes of the Licensing Sub-Committee

**9 August 2018**

**-: Present :-**

Councillors Pentney, Stocks and Thomas (J)

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**22. Election of Chairman/woman**

Councillor Thomas (J) was elected as Chairman for the meeting.

**23. Minutes**

The Minutes of the meeting of the Sub-Committee held on 4 April 2018 and 5 July 2018 were confirmed as a correct record and signed by the Chairman.

**24. An application for a Review of a Premises Licence for The Terrace Bar, 12/14 The Terrace, Torquay, Devon, TQ1 1BN**

Members considered a report on an application for a review of a Premises Licence in respect of The Terrace Bar, 12-14 The Terrace, Torquay. The Premises do fall within the Cumulative Impact Area.

Written Representations received from:

Name	Details	Date of Representation
Police	Application and supporting information for a review of the Premises Licence.	20 June 2018, 16 July 2018 and 7 August 2018
Safeguarding and Reviewing Service	A representation relating to the Licensing Objective 'The Protection of Children from Harm'.	22 June 2018
Devon and Somerset Fire and Rescue Service	A representation relating to the Licensing Objective 'Public Safety'.	28 June 2018
Public Protection	A representation relating to the Licensing Objective 'The Prevention of Public Nuisance'.	18 June 2018
Torbay Council Licensing Authority	A representation relating to the Licensing Objectives 'The Prevention of Crime and Disorder', 'The Prevention of Public Nuisance'.	17 July 2018

## Additional Information:

The Chairman permitted an extension of time for oral representations and advised that each party would be permitted 15 minutes for their representations. All parties present confirmed 15 minutes would be sufficient time to submit their oral representations.

## Oral Representations received from:

Name	Details
Applicant (Police)	The Applicant outlined their application for a review of the Premises Licence in respect of The Terrace Bar, 12-14 The Terrace, Torquay and responded to Members questions.
Public Protection Officer	The Public Protection Officer outlined their representation.
Senior Licensing Officer	The Senior Licensing Officer outlined their representation and responded to Members questions.
Respondent	The Respondent outlined their response to the application and responded to Members questions.

**Decision**

That the Premises Licence in respect of The Terrace Bar, 12-14 The Terrace, Torquay be revoked.

**Reason for Decision**

Having carefully considered all the oral and written Representations, Members resolved to revoke the Premises Licence, as they could not be satisfied that the premises future operations would be compliant with the conditions of its licence and that the Licensing Objectives would be promoted.

In coming to that decision, Members noted the Responsible Authorities catalogue of concerning issues recorded in respect of these premises, Mr Lawrence's apparent lack of understanding pertaining to his responsibilities as a Premises Licence Holder and Designated Premises Supervisor, and what these responsibilities entail, the numerous written and verbal warnings given to Mr Lawrence, Mr Lawrence and staff being found under the influence of alcohol when the premises were visited by Responsible Authority officers; the absence of clear management and accountability at the premises, staff and the resident DJ either fighting with or behaving in an aggressive manner towards its patrons and the number of breaches of the premises licence conditions over a prolonged period.

Whilst Members believed Mr Lawrence to be sincere in his desire to subsequently change the culture of the premises, the staff and his management style, Members had no confidence in Mr Lawrence's ability to execute this desire, as evidenced by the nominal reactionary and short lived improvements made by him to date.

Having heard from Mr Lawrence details of a third party business arrangement in respect of these premises, Members were alarmed to hear that Mr Lawrence had all but wiped his hands of the premises, in that his company who holds the premises licence ceased trading on the 11<sup>th</sup> February 2018 and that he had sold the premises fixtures and fittings to a third party who was subsequently operating the premises with no apparent involvement by Mr Lawrence. This was evidenced by the Responsible Authority officers when they attended the premises and spoke to persons working therein

Both Mr Lawrence's oral submission and that set out by him in his email to the Police dated 6<sup>th</sup> August 2018 which stated that he had not given permission for this third party at any time to trade on his behalf was of further concern to Members, as it was ascertained by them during their questions to Mr Lawrence that he had in fact given the key to the premises to the third party and he was aware that the premises were trading. For Mr Lawrence to submit anything to the contrary, was in their opinion misleading and fell well below the standards reasonably expected by them of a responsible licensee and Designated Premises Supervisor.

On the evidence before them, the third party had been operating the premises in breach of the licencing conditions and it appeared to Members that that neither the third party or his staff had any real knowledge or understanding of these conditions. So much so, that the third party had in fact incorrectly argued with Responsible Authority officers as to what some of the actual conditions were.

Whilst Mr Lawrence made numerous references to the fact that the person who was now operating the premises should have applied for a separate premises licence to run alongside his, this had not materialised and Mr Lawrence was aware of this. When asked by Members why this licence had not been transferred, Mr Lawrence said it was to protect it and in turn the freeholder's interest. This in Members opinion was misguided and had attributed to the number of issues occurring at the premises.

In noting that the premises has a late licence and is situated in the Licensing Authority's Cumulative Impact Area which is an area identified by the Police as being subject to high levels of alcohol related crime and public nuisance, Members found Mr Lawrence's conduct unacceptable and as submitted by him that he was an experienced licensee, it was reasonable for Members to have expected a higher standard of responsibility from such a licensee within this area. In Members' opinion, the absence of a serious fatal incident occurring at these premises was by luck rather than the judgement of those involved in premises operation.

In concluding, Members gave careful consideration to suspending the premises licence for a period of three months to allow the necessary changes and improvements to be implemented. However, despite being given the opportunity to say what these changes would be, Mr Lawrence failed to present a robust plan as an alternative to revocation, other than to say that he would change the locks to the premises and ensure that it did not operate or that he could incorporate the

premises as a restaurant. As such, Members determined that a revocation was the only appropriate outcome in these circumstances.

Chairman/woman

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Public Agenda Item: **Yes**

Title: **Consideration of an Application for a New Hackney Carriage Vehicle Licence**

Wards Affected: **All**

To: **Licensing Sub-Committee** On: **4 October 2018**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Gary O'Shea**  
Telephone: **01803 207631**  
E.mail: [gary.oshea@torbay.gov.uk](mailto:gary.oshea@torbay.gov.uk)

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## 1. What we are trying to achieve

- 1.1 This report asks Members to consider an application for a New Hackney Carriage Vehicle Licence, where the application does not meet the requirements set out in Torbay Council's current Hackney Carriage (Taxi) and Private Hire Licensing Policy 2016 (the Policy).
- 1.2 Members are requested to determine, on the evidence before them, whether or not a departure from the Policy is appropriate.

## 2. Recommendation(s) for decision

- 2.1 The recommendation of this report, is that the application should be refused as outlined in paragraph A3.1 (i) of this report, on the basis that there is no unmet demand for a new licence to be issued. To grant a new licence would exceed the limit set by Torbay Council following the outcome of the previous unmet demand study.

## 3. Key points and reasons for recommendations

- 3.1 The primary legislation governing the licensing of Hackney Carriage vehicles is the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The latter of which is concerned also with the licensing of Private Hire vehicles, drivers and operators.



- 3.2 Section 37 of the 1847 Act makes provision for the licensing of Hackney Carriage vehicles and states that the Licensing Authority may licence 'such number of Hackney Carriages of any kind or description adapted to the carriage of persons, as they think fit'. Section 47 of the 1976 Act permits that a District Council may attach conditions to such grant and makes provision for the Council to require a specific design or appearance or for the vehicle to carry specific distinguishing marks in order to identify the vehicle as a Hackney Carriage.
- 3.3 Torbay Council retains a limit on the numbers of Hackney Carriage Vehicles that are permitted to be licensed. This limit stands at 162 full licences and 7 seasonal licences at this time and is currently at full capacity save for one seasonal licence that was not renewed upon expiry at the end of March this year.
- 3.4 This application has been submitted by Mr Troy Jason Jurak and relates to a Blue Vauxhall Astra, registration number LM14 KXO. The vehicle is currently licensed as a Private Hire vehicle and meets all criteria applicable to being a Hackney Carriage.

**For more detailed information on this proposal please refer to the Supporting Information.**

**Steve Cox  
Environmental Health Manager (Commercial)**

## Annex 1 - Supporting information

### A1. Introduction and history

- A1.1 The primary legislation governing the licensing of Hackney Carriage vehicles is the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The latter of which is concerned also with the licensing of Private Hire vehicles, drivers and operators.
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- A1.4 Whilst section 16 of the Transport Act 1985 removed the discretionary power to limit the numbers of Hackney Carriage Vehicles, the ability to do so is retained, provided that the Licensing Authority is able to demonstrate that there is no significant unmet demand for addition Hackney Carriage Vehicle services. This is a process that has been conducted a number of times and on each occasion, no significant unmet demand has been reported.
- A1.5 This application has been submitted by Mr Troy Jason Jurak and relates to a Blue Vauxhall Astra, registration number LM14 KXO.
- A1.6 The vehicle is currently licensed as a Private Hire vehicle and meets all criteria applicable to being a Hackney Carriage.
- A1.7 Whilst there remains a duty to consider each application on individual merit, granting the application, would amount to a diversion from the Policy, as the limited number set by Torbay Council would be exceeded without evidence to demonstrate that there is an unmet demand in its area, in accordance with section 16 of the Transport Act 1985.
- A1.8 Section 14.1 of the Policy states:
- The Licensing Authority currently imposes a quantity restriction regarding the number of Hackney Carriages licensed by Torbay Council. This has been the case for many years and is supported by results from an unmet demand survey...*
- A1.9 The last complete unmet demand study (although there is one nearing completion), which set the current limit of 162 full licences and 7 seasonal licences was undertaken in late 2014.
- A1.10 No results are currently available with regard to the latest unmet demand study, however, it is anticipated that this will be reported to Members of the full Licensing

Committee, on the 1<sup>st</sup> November 2018. Therefore it is not possible at this time to confirm whether there is any likelihood of an unmet demand for Hackney Carriage licences in Torbay.

## **A2. Risk assessment of preferred option**

### **A2.1 Outline of significant key risks**

A2.1.1 Whilst the recommendation of this report is that the application be refused, there is the risk of an appeal to the Crown Court against that decision, where the onus would be upon the Council to illustrate that there is no significant unmet demand at present. This would be supported by the findings of the 2014 study demand.

A2.1.2 The Licensing Authority has a discretion in carrying out its functions, however, must at all times have regard to the Policy. Whilst there is scope to divert from Policy by granting the application, there is a further risk of challenge, which would be by way of Judicial Review by any aggrieved person by that decision.

## **A3. Options**

A3.1 The options are:

- (i) To refuse the application on the basis that there is no current unmet demand for a new licence to be issued.
- (ii) To grant the application
- (iii) To defer a decision pending the outcome of the latest unmet demand study, which is anticipated to be timetabled to be presented to Licensing Committee on the 1<sup>st</sup> November 2018.

## **A4. Summary of resource implications**

A4.1 There is a right of appeal against refusal of the application, to Crown Court. Such an appeal would carry some resource implications.

## **A5. What impact will there be on equalities, environmental sustainability and crime and disorder?**

A5.1 There are no equality, environmental sustainability or crime and disorder issues.

## **A6. Consultation and Customer Focus**

A6.1 There has been no public consultation on this matter, as there is no requirement to do so.

## **A7. Are there any implications for other Business Units?**

A7.1 There are no implications for other business units.

## **Documents available in members' rooms**

None

## **Appendices**

None

**Background Papers:**

The following documents/files were used to compile this report:

Torbay Council's Hackney Carriage (Taxi) & Private Hire Policy 2016



Public Agenda Item: **Yes**

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- 3.4 This application has been submitted by Mr James William Nicholson and relates to a Black Toyota Auris, registration number MJ64 KHH. The vehicle is currently licensed as a Private Hire vehicle and meets all criteria applicable to being a Hackney Carriage.

**For more detailed information on this proposal please refer to the Supporting Information.**

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## **Appendices:**



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