

Minutes of the Licensing Sub-Committee

26 May 2022

-: Present :-

Councillors Ellery, Atiya-Alla and Douglas-Dunbar

3. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

4. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillors Atiya-Alla and Douglas-Dunbar instead of Councillors Barbara Lewis and Mills.

5. Licensing Act 2003 - An application for a Premises Licence in respect of Fishcombe Cove Café, Fishcombe Cove, Brixham, TQ5 8RA

Members considered a report on an application for a Premises Licence in respect of Fishcombe Cove Café, Fishcombe Cove, Brixham.

Written Representations received from:

Name	Details	Date of Representation
Police	Representation proposing additional conditions should the Premises Licence be granted.	25 April 2022

Oral Representations received from:

Name	Details
Applicant	The Applicant outlined the application and responded to Members questions.
Police	The Police outlined their representation.

Applicant's response to Representations:

The Applicant confirmed that she had accepted the additional conditions proposed by the Police.

Decision:

That the application for a Premises Licence in respect of Fishcombe Cove Café, Fishcombe Cove, Brixham be approved as applied for, subject to the addition of the conditions proposed by the Police, as agreed by the Applicant.

Reason for Decision:

Having carefully considered all the written and oral representations, Members were satisfied that the imposition of the additional conditions alleviated the concerns of the Police and in turn, would ensure that these premises operations, upheld the Licensing Objectives.

6. Exclusion of the Press and Public

Prior to consideration of the item in Minute 7 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended).

7. Application to Renew a Dual Hackney Carriage and Private Hire Drivers' Licence

Members considered an exempt report regarding an application to renew a Dual Hackney Carriage and Private Hire Driver's Licence. At the meeting, Members heard representations from the Licensing Officer and the Applicant who also responded to Members questions.

Decision:

That the Applicant's application to renew his dual Torbay Council Driver's Licence, be refused.

Reasons for Decision:

In coming to that decision, Members carefully considered having been charged with the responsibility to determine the drivers' licence, whether they would allow their son or daughter, spouse or partner, mother or father, grandson or granddaughter or any other person to whom they care or any other vulnerable person known to them to get into a vehicle with the Applicant alone. An unequivocal and unanimous answer by Members to this question, was 'no'.

Furthermore, Members found the Applicant's oral representation to be inconsistent and contradictory to that provided by the Police and determined on the evidence before them, that the Police's evidence to be reliable.

Members were alarmed to learn from the explanation given by the Applicant, of the incident which occurred on the 10 September 2021, that he thought it acceptable driving behaviour, having been asked by a member of the public to wait at the scene of an alleged criminal incident which he was intrinsically linked to, to drive

his licensed vehicle towards that pedestrian who was trying to assist in the incident, mount the pavement in an attempt to drive around the obstructing pedestrian, clipping her with his wing mirror in the process, and then to continue driving with another assisting pedestrian on top of the outside of his licensed vehicle, subsequently breaking, to cause that pedestrian to fall off, sustaining, thankfully in Members opinion, what were reported to be only minor injuries.

Members determined also that inconsistencies in the explanation given by the Applicant, was no more than a poor attempt to justify his conduct during this incident. In coming to that opinion, Members noted that the reason given by the Applicant for wanting to leave the scene, being that he had another fare he needed to get to, and found this not to be persuasive or a satisfactory justification for his conduct, given he already had a fare, being the two passengers, he had dropped to the shop and had been waiting for their return, to convey them on to another destination.

Members found the Applicant's conduct surrounding the incident on 10 September 2021 to be wholly unacceptable and fell well below the standard reasonably expected by them of a professional driver licensed by Torbay Council.

With regards to the incident on 29 April 2022, Members noted that the Applicant had been stopped after committing a moving traffic offence of excessive speed and was swabbed by the Police, testing positive for cocaine. Of great concern, Members noted that the Applicant was carrying out his duties as a licensed driver at the time. The Applicant was subsequently arrested and released pending investigation. The explanation given by the Applicant, as to how he came to test positive for an illegal substance, was in Members opinion, ludicrous, not plausible and a poor attempt to mislead them. Of the explanation, Members noted the positioning of the open can of fizzy drink which the Applicant says the substance must have found its way in to, being beside him in the front of the licensed vehicle, and the location of the two passengers in the back of his licensed vehicle, who the Applicant says must have been taking the illegal substance in the footwell therein, as he did not observe them taking drugs.

On the evidence before them, Members were satisfied that the Applicant himself had knowingly taken the illegal substance and such conduct in their opinion, was wholly unacceptable, placed members of the public and passengers at a significant risk of harm or death and fell well below the standard reasonably expected by them of a professional driver licensed by Torbay Council.

Of the incident on the 2 May 2022, Members noted the explanation given by the Applicant that he had been stopped by a Police Officer only because that Officer had it in for him, to be unfounded on the evidence before them, and noted with great concern that in the Officers opinion, the Applicant presented under the influence of drugs. The Applicant was subsequently arrested and released under investigation, pending the analysis of bloods.

Of the latter two incidents, Members were concerned by the Applicant's written response in the report before them, which states that they occurred within hours of each other, despite one occurring on the Friday and the other on the Monday. To

have written this, was again in Members opinion, a further attempt to mislead them and to play down the seriousness of the situation.

Noting that the Applicant had been arrested for the latter two incidents. Members further noted that the Applicant had replied to an email dated 12 June 2021 from the Licensing Authority, confirming that he had received and read the updated Taxi Policy. Despite this, the Applicant had failed to comply with that Policy, by failing to report an incident within 48 hours of an arrest and release, charge or conviction. Furthermore, and on the evidence before them, Members believed the Applicant sought to deliberately deceive the Licensing Authority by submitting an expired Enhanced Disclosure and Barring Services check, as an up to date one, as it turned out, showed these incidents and was the cause this Applicant was before them to determine.

When asked by Members why he had failed to report these incidents to the Licensing Authority, Members were dismayed and concerned by the Applicant's response of 'don't know, was it a Bank Holiday' and 'they had already written to me so they had already been notified'. This in Members opinion, demonstrated a lack of responsibility, accountability, professionalism and remorse by the Applicant, as he was aware that it was his obligation to notify the Licensing Authority in compliance of that Policy.

Members note in the Applicants written response in the report before them and the oral submission made by him throughout the meeting, that there are no charges against him at this time, stating that as far as the law is concerned, he is free to continue driving a motor vehicle and continue his job as a taxi driver. However, of the latter, Members noted that there was no requirement of a conviction for them to make a determination on the fit and properness of a licensed driver and given the number and nature of the incidents before them, Members unanimously determined that a refusal of this application was appropriate, proportionate and absolutely necessary, to ensure public safety.

Given the good character put forward by the Applicant, Members were advised that the Applicant had an existing written warning in place from a previous Licensing Sub-Committee decision, for speeding offences and complaints had been received for the same, despite the Applicant's submission that since 2007 he had never done anything wrong.

In concluding, Members determined unanimously that this application be refused and in doing so, was in their opinion, the only way the public and conveying passengers would be kept safe.