



## Minutes of the Licensing Sub-Committee

31 May 2018

-: Present :-

Councillor

Councillors Pentney, Sykes and Thomas (J)

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### 11. Election of Chairman/woman

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

### 12. Minutes

The Minutes of the meetings of the Sub-Committee held on 1 and 22 March, 5 and 12 April 2018 were confirmed as a correct record and signed by the Chairman.

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

Members considered a report that sought a review of a Dual Hackney Carriage and Private Hire Drivers' Licence. The Principal Licensing Officer advised Members that the review follows a renewal application from Mr James Uglow, which was made on 28 April 2018. In his application Mr Uglow had declared that he holds a current conviction by entering 'Yes: £300 fine' on the form but provided no other details as to what this fine related to. The renewal did not include a DBS, which was a requirement for this application, though this was subsequently submitted on 4 May 2018, as it had only been applied for on 20 March 2018. The Disclosure confirmed that Mr Uglow had been convicted for 'destroy or damage property (value of damage £5000 or less – Offence against Criminal Damage Act 1971). Mr Uglow was given a conditional discharge and costs were awarded against him for this offence.

At the Hearing, Mr Uglow confirmed that he had submitted the notification in October 2015 but could not provide proof of this and referred to his emails set out in Appendices 2 and 4 of the submitted report which also provided background details to the offence.

#### **Decision:**

That Mr James Uglow's Torbay Dual Hackney Carriage and Private Hire Drivers' Licence be renewed and that he receive a formal written warning for the incident which led to the conviction and his failure to notify the Licensing Authority of this conviction, as set out in Torbay Council's Hackney Carriage and Private Hire Licensing Policy.

**Reason for Decision:**

Having carefully considered all the written and oral Representations, Members resolved to renew Mr Uglow's Drivers' Licence having unanimously voted that in their opinion, he did 'remain a fit and proper person' to hold a Torbay Dual Hackney Carriage and Private Hire Drivers' Licence.

In coming to that decision, Members noted that it was an isolated incident which resulted in the conditional discharge and that during his time as a driver licensed by Torbay Council, there were no issues of concern or complaints received.

Whilst Members noted Mr Uglow's submission that he had provided the Licensing Authority with notice of his conviction in October 2015, they could not be satisfied that this had occurred, as Mr Uglow was not able to provide evidence to support this submission and having checked their systems, officers of the Licensing Authority could find no such notice.

It was of concern to Members that Mr Uglow had continued working as a licensed driver for two and a half years without the Licensing Authority being able to make a determination as to whether or not he 'remained a fit and proper person' following that conviction and it was only at the renewal stage of his driver badge, that the conviction had come to light.

As such, and having been satisfied that Mr Uglow had shown remorse for the situation he found himself in and was now fully aware his obligations as a licensed driver, along with assurances given by him that this would not happen again, Members determined that it was appropriate on this occasion to formally warn Mr Uglow and that this warning should act as a reminder to him should he find himself in the same position in the future.

**14. Exclusion of the Press and Public**

Prior to consideration of the item in Minute 15 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).

**15. Review of a Torbay Council Drivers' Licence**

Members considered a report that sought a review of a Dual Hackney Carriage and Private Hire Drivers' Licence, as set out in the submitted exempt report. At the Hearing, the Applicant and his representatives provided an update in respect of the issues raised in the report and responded to Members' questions.

At the Hearing, an email from the Licensing Enforcement Officer to Mr Cox, Environmental Health Manager (Commercial) dated 30 May 2018 in respect of a telephone call between an Officer of the Licensing Authority and the Driver was circulated to all parties, with the agreement of the Chairman.

**Decision:**

That the Torbay Dual Hackney Carriage and Private Hire Drivers' Licence be reinstated and that the driver, as named in the exempt report, be issued with a formal written warning about appropriate conduct whilst carrying out his duties as a driver licensed by Torbay Council and that a condition be added to his Licence which stipulates that there must be no physical contact between himself and any passenger, unless in the case of a medical emergency or to provide mobility assistance.

**Reason for Decision:**

Having carefully considered all the written and oral Representations, Members resolved to reinstate the drivers' licence, as named in the exempt report, by a majority vote; having been satisfied that in light of the evidence before them, he did 'remain a fit and proper person' to hold a Torbay Dual Hackney Carriage and Private Hire Drivers' Licence.

In coming to that decision, Members applied the test set out in Appendix A, Section 1.2 at page 26 of the Torbay Council's current Hackney Carriage and Private Hire Licensing Policy and noted the driver's fifty years' experience and previous unblemished record as a driver licensed by Torbay Council.

In addition, Members noted that whilst the allegation made against the driver was dismissed at Court, they remained concerned by the submissions made by him in Police interview and at the Licensing Sub-Committee hearing, in respect of passengers known to him. Notwithstanding this concern, Members were satisfied by majority that the driver did not pose a risk to general members of the public but should he continue to conduct himself in an over familiar manner to persons known to him which in their opinion fell well below the standards reasonably expected by them of a professional driver; this in itself may pose a risk not only to that which may be perceived by others who are not aware of an established relationship between the driver and regular passengers but to himself also, against future criminal allegations.

In noting the submissions by the driver with regards to it being in his culture to conduct himself in a certain manner, Members were very clear that such familiar conduct was inappropriate, unacceptable and fell well below the standard reasonably expected by them of a driver licensed by Torbay Council and should the driver fail to change in this regard, he ran a high risk of similar allegations being made against him in the future and that some passengers, be they regular or not, not welcoming such familiarity and being uncomfortable with his conduct.

In safeguarding the driver and all future passengers, Members determined that it was appropriate and proportionate on the evidence before them to impose the condition, as they could not be satisfied that without it, the driver would change his ways.

In concluding, Members noted the driver's submission in respect of costs, as outlined in Appendix 3 to the exempt report but were clear that such consideration

was outside the remit of the Licensing Sub-Committee and that their primary consideration was one of public safety.

## 16. Adjournment

At this juncture the meeting was adjourned until 1.30 p.m.

## 17. Off Licence TQ Ltd, 15 Lucius Street, Torquay

Members considered a report on an application for a review of a Premises Licence in respect of Off Licence TQ Ltd, 15 Lucius Street, Torquay.

Written Representations received from:

Name	Details	Date of Representation
Police	Application for a Review of the Premises Licence in respect of Off Licence TQ Ltd raising concerns in respect of the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.	23 March 2018
Safeguarding and Review Team	Representation raising concerns in respect of protection of children from harm and requesting a condition be added to the Licence to introduce a Challenge 25 policy to replace the Challenge 21 policy.	9 April 2018
Trading Standards	Representation relating to underage test purchase of alcohol.	25 June 2015
Trading Standards	Representation relating to underage test purchase of alcohol.	25 August 2015
Trading Standards	Representation relating to keeping of smuggled goods.	18 November 2015
Licensing and Public Protection	Representation relating to Licensing Act 2003, application help and advice.	25 May 2016

Police	Witness Statement in relation to issues if antisocial behaviour.	28 May 2016
Police	Licensed Premises Report outlining details of visits made to the Premises.	31 July 2016
Police	Representation to the Licence Holder regarding a recent visit to the Premises including a blank form 'Record of CCTV Requests'.	2 August 2016
Police	Representation to Miss Mankowska regarding a recent visit to the Premises including a blank form 'Record of CCTV Requests'.	2 August 2016
Police	Alcohol / Licensing Information Form.	13 May 2017
Police	Licensed Premises Visit Checklist and details of logs recorded in 2017 in relation to anti-social behaviour in St Andrews Church, St Efrides Road, Torquay.	Various
Police	Representation to the Licence Holder regarding a recent visit to the Premises.	21 July 2017
Police	Representation to the Licensing Team requesting a review of the Premises Licence for Off Licence TQ Ltd, 15 Lucius Street, Torquay (which included exempt information in respect of the current Licence Holder).	24 May 2018
Police	Details of logs recorded in 2018 in relation to anti-social behaviour in St Andrews Church, St Efrides Road, Torquay.	Various

## Additional Information:

The Respondent circulated photos of the inside of the premises, showing a sworn off pool cue and the switch this was used to turn off which is too high to reach, signs and maps which are on the counter, training information and updated challenge 25 information.

## Oral Representations received from:

Name	Details
Police	The Police outlined their representations and responded to Members questions.
Respondent	The Respondent and the DPS outlined their response to the application and responded to Members' questions.

**Decision:**

That the Premises Licence in respect of Off Licence TQ Ltd, 15 Lucius Street, Torquay, be revoked.

**Reason for Decision:**

Having carefully considered all the written and oral Representations, Members resolved to revoke the Premises Licence for Off Licence TQ Ltd as they could not be satisfied that the Respondent, who is the current sole director of the company that holds the premises licence, would operate the premises in a responsible and lawful manner and ensure promotion of the Licensing Objectives.

In coming to that decision, Members noted the Respondents involvement in the premises since 2015 which is throughout the period of time the Police and Trading Standards have had cause for concern, the information contained within the exempt report and the Police's written and oral submission in respect of his suitability to hold a premises licence and the lack experience by him, in holding such a licence.

In addition, Members noted that changes to the company who hold the Premises Licence and the Designated Premises Supervisor (DPS) appeared reactive to the Review application rather than considering the premises future operations and that the newly appointed DPS had recently applied for and been granted DPS status at another premises and his appointment at these premises, was only temporary. On the Respondents submissions, this temporary appointment was to allow time for a current member of staff who had been employed at the premises for 18 months to obtain a personal licence. In discovering that the proposed replacement DPS was in fact the daughter of the previous DPS and sole director and secretary of the company who holds the licence, Members unanimously voted in the lack of confidence they had in the ability of this person to implement the changes needed at the premises to ensure that the Licensing Objectives were upheld.

In noting the submissions of the Respondent and DPS in respect of the alcohol seized from a neighbouring premises when a search warrant was executed by the Police on the 4<sup>th</sup> January 2018, Members were satisfied on the evidence of the Police that it was highly probable that alcohol without a UK Duty Paid Stamp was being sold at the premises and the reasons given by the Respondent were in their opinion, not plausible.

Whilst it was accepted that the use of the cut off pool cue could be used for the reasons given by the Respondent, this coupled with the CS gas canister found under the counter at the premises which resulted in a conviction of the previous director and DPS, gave Members serious cause for concern, given the Respondent and the proposed new DPS's involvement at the premises during this time.

Furthermore it was noted by Members that despite being made aware of the Responsible Authorities concerns around anti-social behaviour and nuisance caused by street drinkers in the immediate vicinity of these premises and evidence that alcohol purchased from these premises was attributable, Members were alarmed to learn that the previous agreement given by these premises not to sell single cans of high strength alcohol, the Respondent, along with the previous director and DPS had made it known to the Police that they wished to renege on this commitment, due to the impact this had had on their business. This in Members opinion was not the actions of a responsible licensee, as profits were being placed above the importance of ensuring the promotion of the Licensing Objectives.

In considering what steps had been put in place by the Respondent following service of the Review application, Members were concerned to note that in addition to the resignations and reappointments of directorship of the company that hold the licence on the 5<sup>th</sup> April 2018 and the appointment of a new temporary DPS on the 10<sup>th</sup> April 2018, any measurable change in respect of staff training by the current DPS appeared limited and in some circumstances, had only recently taken place. In noting the DPS intended departure from these premises; it was of great concern to Members as to the sustainability of this training once he had stepped down.

In concluding, Members found the submissions of the Respondent to be at times misleading and whether this was intentional or done so out of naivety, this coupled with their established concerns resulted in the unanimous decision to revoke the licence, even though what if any additional conditions could be added to the licence, were carefully considered by them.