

Minutes of the Licensing Sub-Committee

28 April 2022

-: Present :-

Councillors Atiya-Alla, Ellery and Barbara Lewis

48. Election of Chairman/woman

Councillor Ellery was elected as Chairman for the meeting.

49. Apologies

It was reported that the membership of the Sub-Committee had been amended for this meeting by including Councillor Atiya-Alla instead of Councillor Mills.

50. Minutes

The Minutes of the meetings of the Licensing Sub-Committees held on 24 and 31 March 2022 were confirmed as a correct record and signed by the Chairman.

51. Consideration of the fit and proper status of the holder of a dual Hackney Carriage and Private Hire Drivers' Licence

Members considered a report that sought a review of a Torbay Council Dual Hackney Carriage and Private Hire Drivers' Licence. The Licensing Officer advised Members that Mr Dooley had failed to meet specific requirements as set out in the current Hackney Carriage and Private Hire Licensing Policy 2018 to 2022, by failing in his duty to safeguard a vulnerable child in his care whilst conducting a school contract and also committing an offence under the Town Police Clauses Act 1847, by allowing an additional person to ride without the hirers consent.

At the hearing, Mr Dooley set out the circumstances to this and his actions in transporting another passenger whilst transporting a child to school.

Decision:

That Mr Dooley's dual Torbay Council Driver's Licence be revoked in accordance with Section 61(1)(b) of the Local Government (Miscellaneous) Provisions Act 1976 and that this revocation shall have immediate effect, in accordance with Section 61(2B) of the Local Government Miscellaneous Provisions Act 1976.

Reasons for Decision:

In coming to their 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 Mr Dooley alone. An unequivocal and unanimous answer by Members to this question, was "no".

Furthermore, Members unanimously resolved that as a professional driver, Mr Dooley had failed to take into consideration the safety of a vulnerable child which in their opinion, was and should have been paramount to any sense of compassionate feeling Mr Dooley may have had towards the circumstances of the additional passenger. In allowing the additional passenger to travel at the same time without the consent of the hirer, which is a criminal offence in itself, Members noted with great concern that the additional passenger, on Mr Dooley's own submission, was not known to him and therefore he would not have known if that individual was appropriately vetted, placing the vulnerable child at a greater risk of harm.

Members further found that Mr Dooley had made a serious error of judgement and on the evidence before them, could not be satisfied that Mr Dooley would not make again, given the seriousness of the error and notwithstanding the level of remorse shown on reflection. As a professional driver he should have known that this was wholly unacceptable and should never have relied upon the word of an 11-year-old child that picking up another individual was acceptable. Mr Dooley should have also known that it was unlawful to convey another individual without the hirers consent and that his primary duty, at the time, was to transport the child responsibly and safely to school, under the terms of the contract.

In concluding, Members resolved to revoke Mr Dooley's drivers' licence with immediate effect, as they could not be satisfied that he remained a "fit and proper person" to hold a Torbay Council Dual Hackney Carriage and Private hire Drivers Licence. In determining this, Members believed that Mr Dooley's conduct as a professional driver had fallen below the standards, they expected of driver licenced by Torbay Council and resolved that to suspend his licence with immediate effect was in their opinion, both necessary and proportionate, to ensure public safety.

52. Licensing Act 2003 – An application for a Transfer of the Premises Licence and to vary the Designated Premises Supervisor for Jackz Bar, Parkham Road, Brixham, TQ5 9BU

Members considered a report on an application for a Transfer of the Premises Licence and to vary the Designated Premises Supervisor for Jackz Bar, Parkham Road, Brixham, TB5 9BU.

Written Representations received from:

Name	Details	Date of Representation
Police	Representation objecting to the transfer of the Premises Licence and variation of the Designated Premises Supervisor in respect of Jackz Bar, Parkham Road, Brixham, on the grounds of 'the prevention of crime and disorder'.	5 April 2022

Additional Information:

Following a request from the Police, the Chairman agreed to extend the normal time allowed for oral representations from 10 minutes to 20 minutes for all interested parties.

Oral Representations received from:

Name	Details
Applicant	The Applicant outlined the application and responded to Members questions.
Police	The Police Representatives outlined their objection to the applications and responded to Members questions.

Decision:

That the application to transfer a Premises Licence and to vary the Designated Premises Supervisor in respect of Jackz Bar, Parkham Road, Brixham, be refused.

Reason for Decision:

Having carefully considered all the oral and written representations, Members resolved unanimously to refuse the application to transfer a Premises Licence and the application to vary a Designated Premises Supervisor, as they could see no reasonable justification to depart from the findings and reasons set out in the Licensing Sub-Committee decision made on 31 March 2022 and submitted to them for consideration by the Police. Without repeating all of those reasons here, Members particularly noted that the proposed Premises Licence Holder, Mr Ralph, lacked autonomy, capacity or capability to operate these premises in a manner which ensured the Licensing Objectives would be promoted, and patrons would be kept safe and found the same, on the evidence before them, in respect of these applications.

Furthermore, given the robust management required to manage this type of premises, Members were concerned to learn that the Licensing Authority were also in receipt of an application from Mr Ralph to become the Premises Licence Holder of Hennessey's Bar and Cocktail Lounge. This, in Members opinion,

created a conflict of capacity and capabilities to oversee and operate the premises in the manner necessary to ensure that the Licensing Objectives would be promoted and was a serious error of judgement by Mr Ralph, which reiterated to them, his lack of licensing experience, to operate what the Police have described as a high risk premises.

In addition, Mr Ralph's confirmation that the previous Designated Premises Supervisors Ms Trust and Ms Harley would be in positions of responsibility, despite the premises being subject to Reviews whilst under their control and despite Mr Ralph's submission to Members that he 'would be having words' with them, further demonstrated Mr Ralph's inexperience and were disappointed to note that Mr Ralph's recruitment process appeared to be as lacking as the previous Premises Licence Holder.

Members also noted that despite Mr Ralph's submission to the contrary, the written evidence provided, showed Mr Ralph had involvement with the Premises before February 2022 and Members felt that his statements, that he was not involved, were misleading. Finding agreement with the submission from the Police, that Mr Ralph wanted it known he was involved when there was credit to be taken but disassociated himself, when needing to take responsibility.

Members were also concerned that Mr Ralph did not know the details of the opening and operating times of the Premises Licence of Jackz Bar and Hennessey's Bar and Cocktail Lounge and this further reiterated their lack of confidence in his ability to manage this premises and certainly both, in a manner required to promote the Licensing Objectives.

In conclusion, Members noted the Police Representation that in their view, they had exhausted all avenues to get the Premises Licence Holders and Designated Premises Supervisors of Jackz Bar to comply with their licence and that the Management had failed on all accounts. A Representation Members took very seriously, given the Police's experience of working with challenging premises throughout Torbay and determined, that refusing these applications were both appropriate and necessary in the circumstances before them.

Chairman