

Minutes

Licensing/Appeals Sub-Committee Thursday, 18th February, 2016 at 10.00am

Attendance

Cllr Newberry
Cllr Pound

Cllr Wiles

Officers Present

Gary O'Shea - Principal Licensing Officer
Chris Pickering - Principal Solicitor
Jean Sharp - Governance and Member Support Officer

349. Appointment of Chair

Members resolved that Cllr Wiles should chair this meeting of the Sub-committee.

350. Administrative Function

Members were respectfully reminded that, in determining the matters listed below, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-committee and the rules of natural justice would apply.

351. Application for the grant of a Hackney Carriage Vehicle Licence to vary a pre-licensing condition - Local Government (Miscellaneous Provisions) Act 1976

The Sub-committee was requested to determine an application for the grant of a Hackney Carriage Vehicle licence. The vehicle to be licensed did not currently qualify under the Council's pre-licensing conditions by virtue of the Engine Cubic Capacity being lower than the stipulated minimum requirement.

Members were reminded that the Licensing of Hackney Carriage vehicles was provided under Town Police Clauses Act 1847 and more recently by Local Government (Miscellaneous Provisions) Act 1976 (the Act).

Under provision of Section 47 of the Act a district Council might attach such conditions to the grant of a Hackney Carriage vehicle licence as it considered to be reasonably necessary.

Conditions were in place to be observed by licence holders at all times in the interests of public safety, whilst pre-licensing conditions stipulated the guidelines and minimum standards for newly licensed vehicles.

The applicant made an application to replace their existing licensed vehicle with a brand new Ford Focus which had a petrol driven engine with cubic capacity of 999cc.

Hackney Carriage Vehicle Pre-Licensing Condition 4 stated that the minimum permitted cubic capacity of a petrol engine was 1600cc and 1700cc in respect of a diesel engine.

There were a number of diesel vehicles (approximately 10) that had already been awarded a Hackney Carriage Licence with an engine capacity of 1560cc. These were permitted to be licensed from as long as 6 years ago on the basis that Ford no longer made a 1700cc diesel engine and these were demonstrated to be as powerful.

The conditions existed for the safety and comfort of passengers, the original reason for this particular condition being to ensure that the engine power was sufficient to cater for the vehicle size under full load particularly given the excessive mileage that a Hackney Carriage would cover when compared with a standard family vehicle.

Having been advised that under delegated authority the licensing team would be obliged to refuse the application, the applicant had requested that consideration be given to waiving the condition on this occasion and allowing the vehicle to be licensed.

The Sub-committee considered in detail the written submissions from the agenda documents and the oral submissions presented by the applicant's representative. The Sub-committee noted that there was no precedent in previous decisions and therefore any matter that came before it would be considered on its own merits. Nevertheless, the Sub-committee noted that the policy reason behind the guidelines were there for passenger comfort and that the advances in engine technology since the guidelines were introduced meant that a smaller engine might deliver equivalent power output. The Sub-committee was therefore satisfied that the vehicle submitted for licensing was appropriate to be licensed as a Hackney carriage vehicle as applied for.

Minutes

Licensing/Appeals Sub-Committee Tuesday, 8th March, 2016

Attendance

Cllr McCheyne
Cllr Reed

Cllr Wiles

Also Present

Cllr Newberry

Officers Present

Dave Leonard	-	Licensing Officer
Chris Pickering	-	Principal Solicitor
Rakish Rose	-	Technical Officer, Environmental Health
Jean Sharp	-	Governance and Member Support Officer

380. Appointment of Chair

Members resolved that Councillor McCheyne should chair this meeting of the Sub-Committee.

381. Administrative Function

Members were respectfully reminded that, in determining the matters listed below, they were exercising an administrative function with the civil burden of proof, i.e. 'on the balance of probabilities'. The matter would be determined on the facts before the Sub-Committee and the rules of natural justice would apply.

382. Application for a Premises Licence - Licensing Act 2003, CAFE LOWE, 2-2A VICTORIA ROAD, BRENTWOOD CM14 5EE

The report before Members provided information relating to the application for a variation to the premises licence in respect of Cafe Lowe, 2-2A Victoria Road, Warley Brentwood CM14 4AP.

Members were requested to determine the application having regard to the operating schedule, the Council's Statement of Licensing Policy and the four Licensing objectives:

- Prevention of crime and disorder
- Prevention of nuisance
- Public safety
- Protection of children from harm

The application was received on 13 January 2016 from Mr Robert Lowe and a copy was before the Sub-committee. The applicant sought a licence for the provision of the sale of alcohol for the following hours: 10:30hrs to 00:00hrs daily and late night refreshment for 23:00hrs – 00:00hrs daily with extended hours on Christmas Eve and New Year's Eve.

The application had been advertised in accordance with the Licensing Act 2003 regulations.

Two representations had been received from responsible authorities - Essex Police (Licensing) and Environmental Health (Noise Pollution) - and ten representations were received from interested parties relating to public nuisance, all of which were appended to the agenda.

The Sub-committee was addressed by the applicant's representative who advised that the applicant now wished to reduce the requested licensing hours which would go some way to addressing the concerns of those making representation.

The Sub-Committee considered the written and oral submissions from all parties and noted the greatly reduced hours by way of a varied application, made orally at the meeting. The hours applied for were as follows:

10:00 to 18:00hrs Monday to Sunday and the first Saturday of each month
10:00 to 23:00hrs .

The Sub-Committee noted the objections from local residents but since parking was not relevant to the Licensing Objectives, complaints about current anti-social behaviour could not be associated with the applicant premises. The Sub-Committee put some weight in the recommendations of the Council's Environmental Health department and the Police and noted that their recommendations had been accepted by the applicant and that Mrs Rose from the Environmental Health department accepted at the hearing that with the new hours applied for, she was now happy with the application being granted.

The Sub-Committee were satisfied that the conditions volunteered and accepted were sufficient to satisfy the licensing objectives and therefore resolved to grant the licence as applied for, with the following conditions also applied:

1. Alcohol shall only be sold ancillary to a table meal as defined by s159 of the Licensing Act 2003
2. No drinks or glassware shall be permitted outside the premises

