

# LICENSING AND ENFORCEMENT COMMITTEE

**MEETING** : Tuesday, 18th October 2011

**PRESENT** : Cllrs. Noakes (Chair), Porter (Vice-Chair), C. Witts, Ravenhill, Dallimore, Mozol, Patel and Toleman

## **Officers in Attendance**

Carl Knights, Licensing and Enforcement Officer

Julie Wells, Group Manager, Regeneration Services, Facilities and Support

Gill Ragon, Group Manager, Environmental Health and Regulatory Services

Lisa Wilkes, Food Safety and Licensing Service Manager

Tony Moseley, Licensing Enforcement Officer

Steve Isaac, Solicitor

**APOLOGIES** : Cllrs. Tracey, Durrant, Wilson, Field and Hansdot

## **1. DECLARATIONS OF INTEREST**

## **2. MINUTES**

The minutes of the two meetings held on 16<sup>th</sup> August 2011 were confirmed as a correct record and signed by the Chair.

## **3. MINUTES OF LICENSING SUB-COMMITTEES**

The minutes of the Licensing Sub-Committee held on 30<sup>th</sup> August 2011 were confirmed as a correct record and signed by the Chair.

## **4. PUBLIC QUESTION TIME (15 MINUTES)**

There were no questions from the public.

## **5. PETITIONS AND DEPUTATIONS (10 MINUTES, MAXIMUM 3 MINUTES PER PERSON)**

There were no petitions or deputations.

## **6. APPLICATION FOR A PRIVATE HIRE VEHICLE LICENCE BY MR SELWYN LLOYD-TAYLOR, UNDER SECTION 48 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976**

The Chair outlined the procedure for consideration of the application.

The Licensing and Enforcement Officer outlined the appeal by Mr Selwyn Lloyd Taylor against an officer decision to refuse to issue a private hire vehicle licence to vehicle Mercedes S320 CDI, long wheelbase, registration number M6 NCD, on the

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grounds that it did not meet the age specification required by the Council's policy on the age of vehicles. The vehicle was first registered with the DVLA on 23<sup>rd</sup> March 2005, making it in excess of 6 years old since registration. Mr Taylor's original application had been received on the 5<sup>th</sup> September 2011 and was followed up with an email dated 4<sup>th</sup> October 2011 justifying the purchase of the vehicle.

Mr Taylor had been a licensed Private Hire Driver since 2<sup>nd</sup> May 2008 and currently worked for Andy Cars specialising in a role as a Chauffeur.

Members inspected the car and noted it was an executive class vehicle. It had passed the MOT and the Council's own inspection check.

The City Council is empowered under the Local Government (Miscellaneous Provisions) Act 1976 to licence private hire vehicles and to apply conditions to the issue of such licences.

Council policy for the first time of licensing a private hire vehicle which came into effect on 1<sup>st</sup> June 2010 stipulated '*vehicles will not be accepted for licensing on the first occasion after 5 years from the date of first registration, regardless of whether it was previously licensed anywhere else in the UK, or re-licensed 10 years from the date of first registration*'.

The Licensing and Enforcement Officer reminded Members that in May 2003, the Council's General Conditions for Hackney Carriage and Private Hire Licensing contained the wording '***will not normally be accepted***' in place of the above, thus allowing Officer and Member discretion when deciding the merits of an individual case. It was noted that at present, the discretion rested only with Members to exempt vehicles from Council policy on an individual merits basis.

Members were advised that they had two options:-

(a) To refuse the application on the grounds that the vehicle fell outside of Council policy on the age of vehicles that can be accepted for licensing on the first occasion.

Or

(b) To accept the application on the grounds that the vehicle was of such a high standard for its age, that Council policy should be departed from in this particular case.

There were no questions to the Licensing and Enforcement Officer by either the Applicant or Members.

Mr Taylor addressed the Committee. He explained that there was a demand from customers to be transported in a vehicle of this type, but because of the prohibitive cost of buying them new he had been obliged to look for a second-hand model. This was not the only private hire vehicle he owned and in the event of Members refusing his application he would sell it.

A Member questioned Mr Taylor regarding his knowledge of the five year rule. Mr Taylor responded that he was aware of Gloucester's policy but had mistakenly thought that he would be able to licence it with Tewkesbury Borough Council who

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did not have a five year policy and still operate this service in Gloucester. He had since been informed by Gloucester City Council's Licensing and Enforcement Team that this would not be permissible.

The Licensing and Enforcement Officer summed up the Council's case and reminded Members that they must treat this case on its own merits.

Mr Taylor indicated that he did not have anything further to add.

Committee Members voted to debate the application in private session. The Applicant and Officers left the room.

On return to the room the Chair announced the decision.

**RESOLVED**

That the application be accepted on the grounds that the vehicle was of such a high standard for its age that the relevant condition should be waived in this particular case.

**7. STREET TRADING APPEAL - HOT FOOD UNIT, CEMETERY ROAD, GLOUCESTER**

The Chair explained the process for hearing the appeal against the Officer decision.

The Regeneration Group Manager – Services, Facilities and Support presented an appeal against the Council's refusal to allow Mr Wayne McCormick to operate a hot food unit in Cemetery Road. Mr McCormick had originally requested permission to trade between the hours of 7 am until 12 pm Monday-Thursday, 7 am until 2 am Fridays, and 12 noon until 2 am on Saturdays. Having been informed by the Regeneration Group Manager – Services, Facilities and Support of the refusal of a similar application in the area, Mr McCormick decided to amend his application and now wished to operate between 7 am until 1 pm, Monday to Saturday, or 7 am to 1 pm Monday to Friday, should that be more acceptable to Members.

The Council adopted a new policy and process for Street Trading Applications in April 2009 resulting in the drawing up a Street Trading Criteria and a Consultation programme. Since the introduction of the policy there had been significant improvements to the street trading activity both in the City Centre and the surrounding areas.

In accordance with the policy, there had been consultation on Mr McCormick's proposal with the relevant stakeholders which had resulted in 5 objections from residents of Cemetery Road, mainly concerned with noise, smell, litter and traffic problems. Residents also thought that it was inappropriate to have this type of business so close to the Cemetery. Comments about the siting of the van had been received from Gloucestershire Constabulary and the Cabinet Member. The Ward Councillor had not submitted any objections to the proposal.

Following evaluation of the proposal against the criteria and the objections that had been received, the Regeneration Group Manager – Services, Facilities and Support

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had refused the application. Mr McCormick had appealed against the decision indicating as part of his submission that Cemetery Road was a designated lay-by. The Regeneration Group Manager – Services, Facilities and Support drew Members' attention to an inaccuracy in the report. Gloucestershire Highways' had originally stated that they did not consider Cemetery Road to be a designated lay-by. However, since the report had been published, Gloucestershire Highways had corrected this statement and confirmed that there was a parking plate at the entrance to the road and supplied photographic evidence to that effect. Notwithstanding this, Gloucestershire Highways still had concerns that parking would create parking problems and hazards.

In view of all the objections, the Regeneration Group Manager – Services, Facilities and Support recommended Members to dismiss Mr McCormick's appeal and to uphold the reasons for refusal.

Mr McCormick asked the Regeneration Group Manager – Services, Facilities and Support how many responses had been received from residents. At this point, with the permission of the Appellant a further letter was read out from a resident who had hoped to attend the Committee.

Members questioned the Regeneration Group Manager – Services, Facilities and Support regarding the location of the proposed hot food van in the absence of plans in the report.

Mr McCormick addressed the Committee. He confirmed that he was willing to do all he could to work with the Council and the local residents to allay any concerns. He believed there was ample room for traffic to pass. He said that the proposed van would be 100 metres away from the nearest house and that there would be no noise or smell as he used a dry griddle and cooked breakfast goods only on demand and on a flat plate. Mr McCormick was prepared to put up signage asking cars to exit out on to the avenue rather than driving past homes. He did not believe that there would be any problems with litter. Photographs were produced by the Appellant and photocopied for Members showing the proposed location and an aerial view of the site.

Members questioned the Appellant and the following matters were discussed:-

- The reason for choosing the Cemetery site. The Appellant responded that it was because it was a designated lay-by and would be convenient for those wishing to stop and take a break.
- Requested trading hours – These were confirmed as either Monday to Friday or Monday to Saturday 7 am-1 pm
- Whether the Appellant had done any research on who used the layby and was he aware that coaches for foreign exchange students used the layby as a pick-up/drop off point frequently during the year. The Appellant was not aware of this but stated that he was familiar with the area and believed there was plenty of room for coaches.
- Purchase of the hot food van. The Appellant explained that he had not yet bought it pending the decision of the Committee and that he was willing to purchase the smallest van in a colour which would blend in with the surroundings and not be conspicuous.

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The Regeneration Group Manager – Services, Facilities and Support concluded the Council's case.

Mr McCormick made a closing statement. He believed that the suggested site for the van would be sufficiently far away from residents to prevent any problems with noise, litter, and smell. He had demonstrated with the photographic evidence, he had supplied, that the area was a designated lay-by. He could not say whether it would enhance the area as he felt he was not good at marketing the proposal. However, he had tried to accommodate residents and did not feel that his business would offend anyone.

Committee Members voted to debate the appeal in private session. The Appellant and Officers left the room.

On return to the room the Chair announced the decision.

**RESOLVED**

That the Appeal STAPP31 (Mr McCormick) be dismissed for the following reasons:-

1. The siting of the unit in this particular area would increase problems with traffic.
2. The proposed offer was not compatible with the character of the area in which it was proposed to be situated and neither enhanced the area or added vitality.

The Chair took the opportunity to wish Mr McCormick well for the future on behalf of the Committee.

**8. TYPES OF HACKNEY VEHICLES**

Committee considered a report which had been prepared following a request from a member of the public for pedicabs (rickshaws) to be licensed as hackney carriage vehicles in Gloucester. Members were asked to consider the practical consequences of using this type of vehicle. A pedicab had been available for inspection outside the Council offices prior to the start of the meeting.

Members were being asked to either agree in principle to consider the licensing of pedicabs and the associated work entailed in developing a policy, or to recognise that licensing pedicabs in Gloucester City was not appropriate at that particular time.

The report outlined the definition of a 'Hackney Carriage' and cited instances where pedicabs had been used elsewhere by other Councils. Most schemes had failed because of lack of use apart from Herefordshire Council where they continued to be successful because of the creative approach of the licence holders who used the pedicabs for business use as well as tourism/taxi use.

Members were advised that a pedicab did not meet the Council's current specification as a licensed hackney carriage as set out in appendices B and C to

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the report and that if Members wished to pursue this project that they would need to develop and adopt specific vehicle conditions for them to operate in Gloucester City. The Council had the power to change its current policy to enable consideration of other types of Hackney Carriage Vehicles provided that this was approved by Full Council. Members noted there was currently no Parliamentary legislation to control the provision of pedicabs.

It was noted that pedicabs could not meet the City Council's licensing criteria in respect of wheelchair access and were not exempt vehicles under the Equalities Act 2010.

The Committee was advised of the issues it would need to consider should it be minded to approve the licensing of pedicabs and the fact that it was likely that external specialist legal advice on some aspects would need to be sought. The report also set out the detailed work which Officers would need to carry out. Any costs incurred in investigating the introduction of pedicabs would need to be recovered via the hackney carriage licence fees although this could be spread over 2-3 years. Members were advised that in the event of the venture being unsuccessful, not all the costs would be recoverable.

The following points were discussed:-

- Members were interested in the proposal and felt it would be a good tourist attraction for the City.
- There were concerns that it was difficult to estimate the amount of officer time that would need to be invested in researching the project. The Officers agreed to try to rationalise these.
- Horse-drawn carriages, motorised and non-motorised pedicabs would be evaluated.
- Officers would contact Herefordshire Council in order to learn from their experiences in setting a policy

**RESOLVED**

That Committee agreed in principle to consider the licensing of pedicabs in Gloucester City and agreed to devote resources into developing a policy for the use of pedicabs as hackney carriage vehicles if an appropriate and legally viable approach could be found.

**9. MEMBERS UPDATE AND 3 YEAR WORK PLAN FOR LICENSING AND ENFORCEMENT COMMITTEE**

The Food Safety and Licensing Service Manager briefed Members on an update report which detailed:-

- Updates on licensing activities in the last quarter
- Results of Appeal Cases to the Magistrates' Court against decisions made by the Committee
- A proposed three year work plan for the Committee's quarterly meetings

**RESOLVED**

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That the report be noted.

**10. DATE OF NEXT MEETING**

Tuesday 13<sup>th</sup> December at 18.30 hours.

**Time of commencement: 18:30 hours**

**Time of conclusion: 20:55 hours**

**Chair**