

## LICENSING SUB-COMMITTEE

Thursday 23 May 2024

### Present:-

Councillors Bennett, Holland and Snow

### Also Present

Legal Advisor, Service Lead Legal Services, Apprentice Solicitor, Principal Licensing Officer, Environmental Health and Community Safety Manager, Environmental Health Apprentice and Democratic Services Officer (PMD)

26

### APPOINTMENT OF CHAIR

Councillor Holland was appointed as Chair for this meeting.

27

### DECLARATIONS OF INTEREST

No declarations of interest were made by Members.

28

### LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 EXCLUSION OF PRESS AND PUBLIC

**RESOLVED** that, under Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the consideration of items 5, 6 and 7 on the grounds that they involved the likely disclosure of exempt information as defined in Paragraph 1 of Part I, Schedule 12A of the Act.

29

### APPLICATION TO GRANT A PREMISES LICENCE

The Chair introduced the Members of the Licensing Sub-Committee together with the Legal Advisor, Apprentice Solicitor, Principal Licensing Officer, Environmental Health Officer, Environmental Health Apprentice and Democratic Services Officer. The Legal Advisor set out the hearing procedure and the Applicant, who was in attendance, agreed that the procedure was understood.

The Principal Licensing Officer presented the application to grant a new premises Licence at 174 Sidwell Street, EX4 6RH for a bar/restaurant with both on and off sales of food and drink, for the times as set out in the report.

The application included a plan of the premises and the Applicant had included additional conditions in the Operating Schedule of the application to promote the Licensing Objectives. It was confirmed that the application had been advertised on the premises and in the local newspaper in accordance with the requirements of the Licensing Act 2003, with the last date for representations being 22 April 2024.

It was confirmed that two representations objecting to the Application relating to the Licensing Objectives of the Prevention of Public Nuisance, the Prevention of Crime

and Disorder and Public Safety. The representations were from Environmental Health and Devon and Cornwall Police. The representations were listed in an appendix to the report.

No other representations had been received from any other residents or Responsible Authority.

The Applicant spoke in support of their application and responded to questions from Members and the Legal team.

All parties present were advised that a decision notice would be issued within five working days of the hearing. The Legal Advisor stated that the parties had a right of appeal against the decision notice to the Magistrates Court within 21 days of being notified of the decision.

The meeting was closed so that the Members could determine the application.

**RESOLVED:** that the application be granted as applied for, subject to conditions for the reasons set out in the formal decision notice attached.

30

### **APPLICATION TO RENEW A PRIVATE HIRE LICENCE RELATING TO A VEHICLE OVER 10 YEARS OLD**

Councillor Bennett took over the chair for the remainder of the meeting and introduced the Licensing Sub-Committee Members and Officers.

The Apprentice Solicitor set out the procedure for the hearing advising of the requirements under Section 48(1) of the Local Government (Miscellaneous Provisions) Act 1976.

The Licensing Officer presented the application to renew a Private Hire Vehicle licence in relation to a 4 passenger Ford Mondeo Titanium X which was over 10 years old at the renewal date. The vehicle was first registered on 31 July 2013.

The Applicant had submitted vehicle MOT certificate dated 5 March 2024 showing a recorded mileage of 337,689 miles and the MOT history indicated that the vehicle had failed its MOT, twice in seven years. An independent mechanical inspection report dated 9 March 2024 had also been submitted, together with photographs of the vehicle. The vehicle had been inspected by a Licensing Officer who considered the vehicle to be in very good condition.

The Licensing Officer explained the Taxi Policy, which stated that vehicles presented for renewal aged between 9 and 10 years old would be referred to the Licensing Sub-Committee for determination. Vehicles over 10 years old should not be granted, however, the Applicant had the right to apply for the application to be considered by a Licensing Sub-Committee if the Applicant considered that their circumstances justified a deviation from the policy.

The Applicant was in attendance and spoke in support of their application and responded to questions, from Members, the Service Lead - Legal Services, the Apprentice Solicitor and the Licensing Officer.

Members, having considered the Application, considered the vehicle to be in excellent condition and considered granting a twelve-month application, would allow the Applicant the opportunity to purchase a new vehicle.

**RESOLVED** that the application for the renewal of a Private Hire Vehicle licence be granted for twelve months.

31 **HEARING TO DETERMINE WHETHER A HOLDER OF A HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE IS A FIT AND PROPER PERSON TO HOLD A LICENCE**

The Chair introduced the Licensing Sub-Committee Members and Officers.

The Licensed Driver had been referred to the Licensing Sub-Committee to determine if he was a fit and proper person to hold a licence to drive a Hackney Carriage/Private Hire Vehicle.

The Apprentice Solicitor set out the procedure for the hearing and the provisions of Section 61 of the Local Government (Miscellaneous Provisions) Act 1976.

The Apprentice Solicitor stated that evidential burden was not on the Licensed Driver to prove he was fit and proper but for the Licensing Sub-Committee to be satisfied on the balance of probabilities that the Licensed Driver was no longer a fit and proper person. Every case before the Licensing Sub-Committee was heard on its individual merits and its paramount concern is the safety of the travelling public.

The Principal Licensing Officer presented the report to the Licensing Sub-Committee setting out the issues that had resulted in the Licensed Driver being brought before the Licensing Sub-Committee for a determination.

The Licensed Driver was in attendance and made submissions in response to the evidence set out in the report and responded to questions from Members, the Service Lead – Legal Services and the Apprentice Solicitor. The Licensing Sub-Committee, having considered the report and submissions from the Licensed Driver, were satisfied that the Licensed Driver was a fit and proper person to hold a taxi driver's licence. Written notice of the Licensing Sub-Committee's decision would be issued to the driver within five (5) working days. However, the Licensed Driver would also be issued with a formal written warning from the Chair.

**RESOLVED** that the Licensing Sub-Committee was satisfied that the Licensed Driver was a fit and proper person to hold a driver's licence for a Hackney Carriage/Private Hire Vehicle.

32 **HEARING TO DETERMINE WHETHER AN APPLICANT FOR A HACKNEY CARRIAGE / PRIVATE HIRE DRIVERS LICENCE IS A FIT AND PROPER PERSON TO HOLD A LICENCE**

The Chair introduced the Licensing Sub-Committee Members and Officers, advising that Councillor Snow had been called away and, resultingly, the panel was made up of two members instead of three. The Applicant confirmed that he agreed for the hearing to proceed with two members.

The Applicant had been referred to the Licensing Sub-Committee to determine if he was a fit and proper person to hold a licence to drive a Hackney Carriage/Private Hire Vehicle.

The Apprentice Solicitor set out the procedure for the hearing and the provisions of Section 51 of the Local Government (Miscellaneous Provisions) Act 1976.

The Apprentice Solicitor stated that the evidential burden was on the Applicant to satisfy the Licensing Sub-Committee on the balance of probabilities that the Applicant was a fit and proper person. Every case before the Licensing Sub-Committee was heard on its individual merits and its paramount concern is the safety of the travelling public.

The Principal Licensing Officer presented the report to the Licensing Sub-Committee setting out the issues that had resulted in the Applicant being brought before the Licensing Sub-Committee for a determination.

The Applicant was in attendance and made submissions in response to the evidence set out in the report and responded to questions from Members, the Service Lead – Legal Services and the Apprentice Solicitor. The Licensing Sub-Committee, having considered the report and submissions from the Applicant, were satisfied that the Applicant was a fit and proper person to hold a taxi driver's licence. Written notice of the Licensing Sub-Committee's decision would be issued to the driver within five (5) working days. However, the Applicant would also be issued with a formal written warning from the Chair.

**RESOLVED** that the Licensing Sub-Committee was satisfied that the Applicant was a fit and proper person to hold a driver's licence for a Hackney Carriage/Private Hire Vehicle.

(The meeting commenced at 9.30 am and closed at 2.44 pm)

Chair



## LICENSING ACT 2003

### NOTICE OF DETERMINATION

<b>Date of Hearing:</b>	23 <sup>rd</sup> May 2024
<b>Application:</b>	Premises Licence
<b>Name of Premises:</b>	174 Sidwell Street
<b>Address:</b>	174 Sidwell Street, Exeter EX4 6RH
<b>Licensing Sub-Committee:</b>	Cllr Peter Holland (Chair) Cllr Snow Cllr Bennett
<b>Committee Legal Advisor(s):</b>	Matthew Hall Max Murphy
<b>Licensing Officer(s):</b>	Nigel Marston
<b>Democratic Services Officer(s):</b>	Pierre Doutreligne
<b>The Applicant:</b>	Damien Mark Sluman
<b>Representations:</b>	Environmental Health: Lisa Cocks Environmental Health Apprentice: Kaylee Nisbet Devon and Cornwall Constabulary (not in attendance)
<b>Hearing Duration:</b>	0935 – 1029hrs

### TAKE NOTICE:

That the Licensing Sub-Committee convened on 23<sup>rd</sup> May 2024 to determine the application for a premises licence has resolved to grant the licence in accordance with section 18 of the Licensing Act 2003 subject to the agreed amendments and conditions set out below together with the conditions set out in the Operating Schedule of the application.

### THE SUB-COMMITTEE'S DECISION:

In determining this application, the Licensing Sub-Committee took into account all the relevant evidence and information presented to it both written and oral, and took account of all the matters it is bound to take account of, in particular the following:

- Licensing Act 2003
- Statutory Guidance
- Exeter City Council Statement of Licensing Policy
- Human Rights Act 1998
- Any equality and diversity considerations

### Amendments to the Application

The application is granted subject to the amendments agreed by the Applicant with the Devon and Cornwall Constabulary set out below.

Opening Hours Friday to Saturday 1000hs to 0400hrs

Supply of Alcohol for consumption on and off the premises Friday to Saturday 1000hrs to 0330hrs

Operating Schedule b) The prevention of crime and disorder

SIA licensed door supervisors shall be on duty at the premises until all customers have left the premises as set out below:

A minimum of 1 on Sunday to Thursday where the premises is open after 22:00hrs.

A minimum of 2 on Friday to Saturday where the premises is open after 22:00hrs.

### Conditions

In addition the following conditions were imposed by the Licensing Sub-Committee:

A telephone number shall be made available and displayed in a prominent location where it can be conveniently read from the exterior of the premises for local residents to contact in the case of noise-nuisance or anti-social behaviour by persons or activities associated with the premises. The telephone number will be a direct number to the management who are in control during opening hours. A record will be kept by management of all calls received, including the time, date and information of the caller, including action taken following the call. Records will be made available for inspection and copying by an authorised officer of a responsible authority throughout the trading hours of the premises.

Noise levels in outside areas will be monitored and controlled to minimise any potential impact on local residents and neighbouring businesses. Customers will be advised of the need to respect local residents and neighbouring businesses, where appropriate. Any patrons continuing to cause any disturbance or disorder will be asked to leave the premises.

Doors and windows shall be kept shut at all times during the performance of live music or the playing of recorded music inside the premises. Doors may be opened for normal entrance and egress of people but must be shut immediately after.

### **REASONS FOR DECISION**

Having carefully considered all the written and oral Representations, the Licensing Sub-Committee unanimously resolved to approve the application for a Premises Licence, subject to the amendments and the conditions set out above.

In coming to their decision, Members had regard to the concerns raised by the Responsible Authority Environmental Health in respect of potential noise nuisance and the proximity of the premises to residential properties. The Licensing Sub-Committee were reassured by the applicant that the premises would be run primarily as a restaurant with weekly karaoke and live 'acoustic' music. Whilst no neighbouring businesses or residents had made representations the Licensing Sub-Committee considered it appropriate and proportionate to address the concerns raised by Environmental Health and attach conditions to ensure that the Licensing Objective prevention of public nuisance would be promoted.

In addressing the Cumulative Impact Zone which applies to the Licensable Activity the sale of alcohol the Licensing Sub-Committee considered that the business model proposed by the Applicant would not add to the cumulative impact of the area and this was supported by the reduction in the operating hours and conditions agreed with the Devon and Cornwall Constabulary.

The Licensing Sub-Committee were mindful of the outside area but this did not form part of the application and should be addressed by the Pavement Café regime under the Business and Planning Act 2020. Members were reassured by the standard licence conditions contained within the Council's Pavement Licences in respect of noise nuisance and

disturbance. The Applicant also stated if he was to make an application for a Pavement Café Licence he would request a terminal hour of 22:00hrs.

Whilst the Licensing Sub-Committee were reassured by the Applicant's commitment to monitor sound and engage with neighbours to address complaints as they arise, the Licensing Sub-Committee noted that a Review of the Premises Licence can be sought by any party should issues arise, as a result of this grant of a Premises Licence.

### **RIGHT OF REVIEW**

At any stage, a responsible authority or any other person may ask the Licensing Authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives; the prevention of crime and disorder, Public Safety, the prevention of public nuisance and the protection of children from harm.

### **RIGHT OF APPEAL**

All parties are reminded of their right to appeal against this decision to the Magistrates' Court by virtue of Section 181 and Schedule 5 Part 1 of the Licensing Act 2003. Any appeal must be made within the period of 21 days beginning with the date on which you are notified of the decision.

### **Any Appeal is commenced by a notice addressed to:**

The Clerk to the Justices, North and East Devon Magistrates' Court Office, Southernhay Gardens, Exeter, EX1 1UH Telephone 01392 415300.

Parties are advised to contact the court office to check the form of notice required and the fee payable.

### **The Chair of Licensing Sub Committee**

A handwritten signature in black ink, appearing to read 'Peter Holland', with a long horizontal flourish extending to the right.

Councillor Peter Holland

This page is intentionally left blank