

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 4th October, 2017

Present: Cllr Mrs F A Kemp (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/53 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/54 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/55 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 13/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for a Probationary Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel was advised that the Applicant, in completing the questionnaire which accompanied the application, had disclosed a Caution for Possessing a Controlled Drug – Class B – Cannabis/Cannabis Resin dated 5 September 2013.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer and to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that public safety was paramount when processing a prospective candidate to ensure that the applicant was a 'Fit and Proper' person to hold a licence;
- (2) that Section 5.6.6 of the Policy stated that a licence was conditional on there being no adverse information revealed on the DBS disclosure which would render the applicant as not 'Fit and Proper';
- (3) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its merits;
- (4) that, with regard to previous convictions, the overriding consideration was the safety of the public although some discretion may be appropriate if the offence was isolated and there were mitigating circumstances; and
- (5) that Section 12.4 of the Policy stated that an application would normally be refused when it has been made within 5 years of the date of conviction for a drug-related offence.

The Panel listened carefully to the Applicant's full and candid explanation of the circumstances of the offence and took into account her qualifications and experience as a care worker and the endorsement provided by her Mentor. The Panel concluded that the Applicant was a 'Fit and Proper' person to hold a licence. For these reasons the Panel, therefore

RESOLVED: That the Applicant be GRANTED a Probationary Private Hire Driver's Licence.

The meeting ended at 10.31 am
having commenced at 10.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 4th October, 2017

Present: Cllr Mrs F A Kemp (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/56 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/57 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/58 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 14/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Panel was asked to consider whether an application for a Probationary Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel was advised that the Applicant, in completing the questionnaire which accompanied the application, had failed to declare a Conviction for Common Assault dated 28 November 2011.

The Panel had regard to the report of the Director of Central Services and Monitoring Officer and to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that public safety

was paramount when processing a prospective candidate to ensure that the applicant was a 'Fit and Proper' person to hold a licence;

- (2) that Section 5.6.6 of the Policy stated that a licence was conditional on there being no adverse information revealed on the DBS disclosure which would render the applicant as not 'Fit and Proper';
- (3) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its merits;
- (4) that, with regard to previous convictions, the overriding consideration was the safety of the public who entrusted themselves to the care of a driver both for their own safety and for fair dealing; and
- (5) that Section 12.3.1 of the Policy stated that, in general, a period of 4 to 10 years free of conviction of offences including violence would be required before an application was likely to be considered favourably. In addition, an application would normally be refused when it has been made within 4 years of the date of conviction for an offence of common assault.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the Conviction. However, the Panel was not convinced that the explanations given were sufficient to overturn the position set out in the Council's Policy which required an 8 year period to have passed following a Conviction for Common Assault and, having considered all the circumstances, was not satisfied that the Applicant was a 'Fit and Proper' person to hold a Probationary Private Hire Driver's Licence. For these reasons the Panel, therefore

RESOLVED: That the application for a Probationary Private Hire Driver's Licence be REFUSED.

The meeting ended at 11.41 am
having commenced at 11.00 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Wednesday, 4th October, 2017

Present: Cllr Mrs F A Kemp (Chairman), Cllr Mrs P A Bates and Cllr M Taylor

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/59 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/60 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/61 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER LICENCE - CASE NO 15/2017

(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The Director of Central Services and Monitoring Officer advised the Panel that, following the publication of the agenda, the applicant had advised that she was unable to attend the Hearing. The Panel therefore

RESOLVED: That consideration of Case No 15/2017 in respect of an application for a Probationary Private Hire Driver's Licence be DEFERRED to the next meeting of the Licensing and Appeals Panel scheduled to be held on Thursday 26 October 2017.

The meeting ended at 12.02 pm
having commenced at 12 noon

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 26th October, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs S M Barker and
Cllr O C Baldock

Together with representatives of the Licensing Authority

PART 1 - PUBLIC

LA 17/62 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

LA 17/63 EXCLUSION OF PRESS AND PUBLIC

The Chairman moved, it was seconded and

RESOLVED: That as public discussion would disclose exempt information, the following matters be considered in private.

PART 2 - PRIVATE

**DECISIONS TAKEN UNDER DELEGATED POWERS IN
ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE
CONSTITUTION**

**LA 17/64 APPLICATION FOR A PROBATIONARY PRIVATE HIRE DRIVER
LICENCE - CASE NO 15/2017**

**(Reasons: LGA 1972 Sch 12A Paragraph 1 – Information relating to
an individual)**

The Panel was asked to consider whether an application for a Probationary Private Hire Driver's Licence should be granted following the receipt of information from the Disclosure and Barring Service (DBS).

The Panel was advised that the DBS Certificate provided by the Applicant had disclosed a Conviction dated 8 December 2014 for Racially/Religiously aggravated harassment/alarm/distress by words/writing on 26 October 2014 – Crime and Disorder Act 1998 s.31(1)(c).

The Panel had regard to the report of the Director of Central Services and Monitoring Officer and to the following:-

- (1) that Section 1.5.4 of the Tonbridge and Malling Borough Council Hackney Carriage and Private Hire Policy stated that public safety was paramount when processing a prospective candidate to ensure that the applicant was a 'Fit and Proper' person to hold a licence;
- (2) that Section 5.7.3 of the Policy regarding 'Fit and Proper' required that the Council consider each case on its merits;
- (3) that, with regard to Cautions and Endorsable Fixed Penalties, Section 12.12.1 required that formal cautions and endorsable fixed penalties be treated as though they were convictions and must be disclosed; and
- (4) that, with regard to previous convictions, Section 12.1.2 of the Policy stated that an application would normally be refused when it has been made within 4 years of the date of conviction for a racially aggravated s.5 Public Order Act 1986 offence (causing harassment, alarm or distress) under s.31(c) Crime and Disorder Act 1998.

The Panel listened carefully to the Applicant's explanation of the circumstances surrounding the conviction and took into account that it was a sole offence with no history of similar misconduct. The Panel noted that the Applicant had pleaded guilty to the offence and appeared contrite. Having taken into account the circumstances the Panel concluded that the Applicant was a 'Fit and Proper' person to hold a licence. For these reasons the Panel, therefore

RESOLVED: That the Applicant be GRANTED a Probationary Private Hire Driver's Licence.

The meeting ended at 9.50 am
having commenced at 9.30 am

TONBRIDGE AND MALLING BOROUGH COUNCIL

LICENSING AND APPEALS PANEL

Thursday, 26th October, 2017

Present: Cllr Mrs J A Anderson (Chairman), Cllr Mrs S M Barker and Cllr O C Baldock

Together with representatives of the Licensing Authority, Mr F Prescott (Applicant), Mrs L Lane (Owner of the premises), representatives of Environmental Health and Kent Police (Responsible Authorities) and Councillor M Base (Interested Party)

PART 1 - PUBLIC

LA 17/65 DECLARATIONS OF INTEREST

There were no declarations of interest made in accordance with the Code of Conduct.

DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION

LA 17/66 APPLICATION FOR NEW PREMISES LICENCE FOR HENGIST VILLAGE RESTAURANT AND BAR, 7 - 9 HIGH STREET, AYLESFORD

The Panel gave consideration to an application for a Premises Licence made by Mr Francis Walter Prescott under Section 17 of the Licensing Act 2003 in respect of premises known as Hengist Village Restaurant and Bar, 7-9 High Street, Aylesford. The application related to the Sale of Alcohol, Live Music, Recorded Music and Late Night Refreshment.

The Panel gave careful consideration to the written report of the Director of Central Services and Monitoring Officer, the application set out at Annex 3 to the report and the written representations received during the statutory consultation period (as set out at Annexes 4, 5, 6 and 7 to the report).

The Panel listened carefully to the representations made by Mr F Prescott, Ms E Shaw on behalf of Kent Police, Mr C Kennard of the Environmental Protection Team and local resident Councillor M Base.

The Panel was mindful of its obligations under Section 18(3) of the Licensing Act 2003 which stated that, having regard to the relevant representations, the Licensing Authority must take such of the steps set out in Section 18(4) (if any) as it considers appropriate for the promotion of the licensing objectives. In addition the Panel had particular regard to

the provisions of Chapter 9 of the amended guidance issued under Section 182 of the 2003 Act and to the Council's Statement of Licensing Policy.

The Panel was satisfied that the hours of operation for sale of alcohol and live and recorded music as agreed between the applicant and Kent Police was acceptable. However, the Panel was not satisfied that the Licensing objective of preventing public nuisance would be met were any late night refreshment to be permitted because the provision of this service after 2300 hours would extend the length of time customers would remain on the premises and consequently lead to an increase in noise later into the night. The Panel determined that late night refreshment should be excluded from the licence.

The Panel was satisfied that the licensing objectives could properly be furthered with the imposition of mandatory conditions, conditions consistent with the operating schedule, those conditions agreed by the applicant with the Responsible Authorities (Kent Police, Kent Trading Standards and Tonbridge and Malling Borough Council Environmental Protection) and the following additional conditions:-

- A condition requiring a log to be kept of all training undertaken by staff, to be made available for inspection by the licensing authority or other responsible authority at all reasonable times;
- An amendment to the agreed condition requiring staff to be trained, to require such training to be carried out only with an accredited body;
- A requirement that the complaints log would be made available for inspection to the licensing authority or other responsible authority at all reasonable times.

The Panel also considered that the following additional conditions were required to further the licensing objective of the prevention of public nuisance:-

- A condition ensuring an appropriate facility for communication between local residents directly to the Designated Premises Supervisor (DPS) would be set up and maintained for the premises in the event of any issues;
- A condition requiring notices to be placed in prominent locations advising patrons to leave the premises quietly;
- A condition requiring all doors and windows to be kept closed at all times save for ingress and egress.

The Panel also made the following observations:-

- The issues surrounding the extractor fan, whilst not a matter for licensing, should be addressed as a matter of urgency;
- Staff should be advised that if they are requested to call taxis for customers, the drivers should be asked that the pick-up takes place in the car park rather than on the High Street.

Having had regard to the above the Licensing and Appeals Committee, sitting as a Panel

RESOLVED: That the Premises Licence be granted subject to the mandatory conditions as set out in the Licensing Act 2003, such conditions as are consistent with the operating schedule accompanying the application and the following conditions:-

Section E	Live music: Monday to Sunday from 12:00 hours until 23:00 hours
Section F	Recorded music: Monday to Sunday from 12:00 hours until 23:00 hours
Section I	Late Night Refreshment: None
Section J	Supply of alcohol: Monday to Sunday from 12:00 hours until 00:00 hours

Conditions:

1. CCTV to be installed inside covering the bar areas on all floors and the reception area, and outside the premises covering areas including the front, side and rear of the venue including the patio and garden areas.
2. CCTV must be operational at all times that the premises are open to members of the public.
3. CCTV recordings must be securely stored digitally and retained for a minimum of 14 days.
4. CCTV system must be regularly maintained and records of maintenance kept at the premises.
5. Signs to be displayed at all exits and in outside public areas requesting patrons to respect neighbours and leave/use the areas quietly.
6. Staff to oversee outside areas and engage with patrons to ensure noise levels are minimised to prevent nuisance to residents.

7. A log must be maintained on the premises of any incidents or complaints received and action taken and will be available for inspection.
8. All staff shall be trained in the law about the sale of alcohol. Such training will include challenging every individual who appears to be under 25 years of age and to refuse service where individuals cannot produce acceptable means of identification, acceptable forms of ID and using the refusal register. Such training (including refresher training) will be logged and provided not less than every twelve months. The training log will be made available for inspection by the Licensing Authority and responsible authorities at all reasonable times.
9. All staff training will be carried out by an accredited body.
10. The premises licence holder will ensure that there is a facility in place (such as a direct dial telephone number) that allows local residents to communicate directly with the designated premises supervisor in the event of any issues arising.
11. All doors and windows will be kept closed at all times except for ingress and egress.
12. The Challenge 25 proof of age scheme shall be operated at the premises. All customers who appear under the age of 25 will be challenged to prove that they are over 18 when attempting to purchase alcohol. Acceptable forms of ID include a photo driving licence, passport, or Home Office approved identity card bearing the holographic 'PASS' mark. If the person seeking alcohol is unable to produce an acceptable form of identification, no sale or supply of alcohol shall be made to or for that person.
13. A refusals log must be kept at the premises and made immediately available on request to the police or an authorised person. The refusals log is to be inspected on a monthly basis by the Designated Premises Supervisor and noted in the log and a record made in the log of any actions that appear to be needed to protect young people from harm. The log must record all refused sales of alcohol and include the following:
 - the identity of the member of staff who refused the sale
 - the date and time of refusal
 - the alcohol requested and the reason for refusal
 - description of the person refused alcohol

14. Posters of A4 size shall be displayed conspicuously on the premises in the customer facing areas.
 - 'Challenge 25' to advise potential purchasers that suitable proof of age will be required for all purchasers who appear to be under 25
 - 'Proxy purchasing' intended to warn adults not to buy alcohol for those under 18 years of age.

LA 17/67 EXCLUSION OF PRESS AND PUBLIC

There were no items considered in private.

The meeting ended at 12.08 pm
having commenced at 10.04 am