



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 26 July 2013

2.30 pm

Council Chamber, Municipal Offices

Membership	
Councillors:	Garth Barnes (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Rob Reid, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett and Roger Whyborn

The Council has a substitution process and any substitutions will be announced at the meeting

Agenda

1.		APOLOGIES	
2.		DECLARATIONS OF INTEREST	
3.		PUBLIC QUESTIONS These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.		MINUTES OF MEETING HELD ON 5 JULY 2013	(Pages 1 - 4)
5.		MINUTES OF SUB COMMITTEE MEETINGS None	
6.		STREET TRADING APPLICATION Mr Richard Brabin	(Pages 5 - 16)
7.		PRIVATE HIRE DRIVER REVIEW Mr John Carr	(Pages 17 - 24)
8.		PRIVATE HIRE DRIVER REVIEW Mr Tohur Uddin	(Pages 25 - 32)
9.		CONSULTATION RESPONSE TO THE PROPOSAL TO ADOPT THE LATE NIGHT LEVY IN CHELTENHAM	(Pages 33 - 36)
10.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	

11.		DATE OF NEXT MEETING 6 September 2013	

Contact Officer: Rachael Sanderson, Democracy Assistant, 01242 264130
Email: democratic.services@cheltenham.gov.uk

Licensing Committee

Friday, 5th July, 2013
2.30 - 2.54 pm

Attendees	
Councillors:	Garth Barnes (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Anne Regan, Rob Reid, Malcolm Stennett, Charles Stewart, Pat Thornton, Jon Walklett and Roger Whyborn
Also in attendance:	Councillor Helena McCloskey

Minutes

1. APOLOGIES

2. DECLARATIONS OF INTEREST

Councillor Reid declared a prejudicial and personal interest in agenda item 6 as he was friends with the applicant.

3. PUBLIC QUESTIONS

None received

4. MINUTES OF MEETING HELD ON 7 JUNE 2013

Resolved that the minutes of the meeting held on 7 June 2013 be agreed and signed as an accurate record.

5. MINUTES OF SUB COMMITTEE MEETINGS

None

6. PRIVATE HIRE VEHICLE APPLICATION

Councillor Reid retired from the Chamber at 14:35 due to his declaration of interest.

Louis Krog, Business Support and Licensing Team Leader introduced the report as circulated with the agenda. An application for a Private Hire vehicle licence had been received from Mr Keffler to licence a BMW X5 first registered on 23 April 2004.

The vehicle, being registered as new in 2004, is older than the maximum permitted age limit of 5 years for date of manufacture.

Appendix A of the report showed a picture of Mr Keffler with Pierce Brosnan who he chauffeured around the Cotswolds.

Appendix B of the report showed a reference from Mr Ian Coley

Appendix C of the report provided a photograph of the vehicle.

Appendix D of the report showed a copy of the certificate of compliance.

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Louis Krog advised Members that Cheltenham Borough Council does not have a policy on maximum mileage for vehicles and this part of Mr Keffler's statement was irrelevant.

Louis Krog also told Members that Mr Keffler's point in his statement about the vehicle being un-economic because it would not be on the road 8 hours a day most days of the week and it would only attract tax relief of 8% was also not relevant. The policy looked at suitability and safety of the vehicle.

Mr Keffler attended the meeting and spoke in support of this application. Mr Keffler detailed his statement shown at point 3.1 of the report.

Members asked the following questions:

- When asked, Mr Keffler confirmed this application was for an additional vehicle to his already licensed Bentley. Mr Keffler advised the Committee that he did not envisage licensing any more vehicles as he would be driving the vehicles himself.
- When asked, Mr Keffler stated that he also worked as a chartered accountant.
- A Member referred to Mr Keffler's statement and asked how this application helped the local economy.
- Mr Keffler said that his currently licensed Bentley provided an unusual vehicle to customers. He wanted to extend his service to various luxury hotels to enable customers to be driven in a 4 wheel drive vehicle. Mr Keffler referred Members to the reference provided by Mr Coley at appendix B of the report. This additional vehicle would provide a unique selling point for these sorts of establishments.
- When asked, Mr Keffler confirmed he used either vehicle for journeys once a day.
- A Member sought clarification about the photograph of the BMW at appendix C of the report.
- Mr Keffler confirmed the photograph was taken from the BMW website and was not the actual vehicle. Mr Keffler stressed that his BMW was the same type of vehicle to the photograph and apologised for not providing a real life photograph. He said the vehicle had been inspected and it was in immaculate condition.
- A Member reminded Members that the need today was to concentrate on the age of the vehicle and asked if the vehicle had passed all its tests.
- Mr Keffler confirmed it had passed all required tests and there were no problems with the vehicle.
- When asked, Mr Keffler confirmed he had purchased the vehicle 2 months ago and it had had 2 previous owners. The vehicle was always serviced at BMW dealerships so retained a full service history.
- When asked, Mr Keffler advised the Committee that his average annual mileage was between 15000 and 20000 miles.
- A Member reminded Mr Keffler that if the licence was granted, the vehicle would be subject to 6 monthly MOT tests as the vehicle was above the required age limit.
- When asked, Mr Keffler stated that the 4 wheeled drive BMW could be used for guests staying at hotels who needed to be driven off road for shoots.

- Mr Keffler confirmed the mileage of the vehicle was 86000 miles.

In summing up, Mr Keffler said the vehicle had full service history like his Bentley. The vehicle if licensed would be subject to 6 monthly MOT tests and he did not scrimp on safety at all.

Members were advised that they had two options as set out in the report:-

1. The application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy; or
2. The application be refused because the vehicle does not comply with the Council's adopted policy.

Members voted for these two options:

Option 1: Voting For: 7, Against 2, Abstentions 0

Option 2: Voting For: 2, Against 7, Abstentions 0

RESOLVED that the application be granted because the Committee considers there to be sufficient grounds to deviate from the adopted policy.

7. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION

None

8. DATE OF NEXT MEETING

26 July 2013

9. BRIEFING NOTE

Garth Barnes
Chairman

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Cheltenham Borough Council

Licensing Committee – 26 July 2013

Local Government (Miscellaneous Provisions) Act 1982 Application for a Street Trading Consent

Mr Richard Brabin

Report of the Senior Licensing Officer

1. Summary and recommendation

- 1.1 We have received an application from Mr Richard Brabin for a street trading consent to sell hot and cold food and drink from a mobile catering bicycle measuring 8ft (L) x 3ft (W) in the High Street and Promenade.
- 1.2 The proposed trading location of the mobile unit is between the High Street junction meeting Berkeley Street and the full length of the Promenade including Montpellier Street and Montpellier Walk.
- 1.3 The requested trading period and days are :-

Monday	10.00 - 17.00
Tuesday	10.00 - 17.00
Wednesday	10.00 - 17.00
Thursday	10.00 - 17.00
Friday	10.00 - 17.00
Saturday	10.00 - 17.00
Sunday	NONE

- 1.4 An image of the Mobile Catering Bicycle is attached at **Appendix A** and a location map is attached at **Appendix B**.
- 1.5 **The Committee is recommended to resolve that:**
 - 1.5.1 **The application be approved because Members are satisfied that the location is suitable, or**
 - 1.5.2 **The application be refused because it does not comply with the provision of the Street Scene policy as the proposed location(s) are deemed unsuitable.**

1.3 Implications

1.3.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.3.2 Legal

No right of appeal.

The Local Government (Miscellaneous Provisions) Act 1982 provides that a local authority can grant a trading consent for an individual within their area. Under the legislation consent can be granted for a period not exceeding 12 months. Consent must therefore be reviewed every 12 months. A local authority can apply reasonable conditions to the consent.

Consent can be revoked at any time. An existing trader or a trader who has previously traded from a location does not have a legal right to any consent being automatically renewed or granted.

Any application should be considered in line with the Council's policy on Street Trading.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The current policy for *Town Centre Street Activities: Street Trading & Objects on the Highway* was approved on 1st April 2013. A copy of the whole policy has previously been circulated to members and extracts are included in the application pack that was given to the applicant.

3. Policy Principles, Aims & Objectives

This section outlines the policies the council will apply when making decisions on applications for consents.

Each application will be determined on individual merits and in view of promoting the principles and objectives contained in this policy.

In particular the policy aims to promote the following aims and objectives in reference to street trading activities:

- To have a clear & transparent policy governing street trading activities in the Borough.
- To enable the Council to manage all street trading activities in order to provide effective control measures.
- To ensure that all street trading activities meet the required quality standards, pose no risk to public health, safety & protection and do not prejudice the Council's efforts to improve the image, perception and attractiveness of the Town as a tourist and leisure destination, and is in keeping with the streetscape.
- To ensure that all objects placed on the highway meet the required quality standards, pose no risk to public health, safety & protection and to ensure that these objects do not obstruct the highway.
- To avoid duplication with other statutory provisions and the Council's commitment to work in partnership with other enforcement agencies.

3.1 Site Assessment

Consent from static locations will not normally be granted where:

- A significant effect on road safety would arise either from the siting of the trading activity itself, or from customers visiting or leaving the site,

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- There would be a significant loss of amenity caused by traffic, noise, rubbish, potential for the harbourage of vermin, odour or fumes,
- There is a conflict with Traffic Orders such as waiting restrictions,
- The site or pitch obstructs either pedestrian or vehicular access, or traffic flows, or places pedestrians in danger when in use for street trading purposes,
- The site does not allow the consent holder, staff and customers to park in a safe manner,
- The street trading activity is carried out after dusk and the site is not adequately lit to allow safe access and egress from the site for both customers and staff.

3.2 Public Safety

In the interests of highway safety, no activity will be permitted within a minimum of 2 metres of a kerb.

3.3 Conservation Areas

The scope of this part of the policy covers the entire borough. However, the town centre, amongst a number of other areas in the borough, has conservation area status and as a result the Council will adopt a more restrictive approach to applications for these areas in particular.

3.4 Town Centre & Conservation Area

Despite this, the Council would not wish to prevent a modest amount of street trading in these areas of the town of a type which could positively enhance the enjoyment of the town as a tourist and leisure destination. To this end, street trading will generally be permitted in these areas where it enhances the town's reputation as a tourist and leisure destination, and is in keeping with the streetscape.

The appearance of a trader's business must enhance, or at least not be detrimental, to the street scene.

3.5 Street Trading Consent Conditions

In all cases, consent will only be given if the following detailed criteria are satisfied:

Not to trade or operate the Unit in such a way as to cause obstruction of the Street or danger or annoyance to persons using the Street.

3. Consultee Comments:

3.1 Responsible Authorities

Cheltenham Business Partnership Manager – I would object to this application for the following reasons:

There would be no control on where the bike may be parked to sell the food and drink within the area the applicant intends to trade and therefore could be open to trade in totally inappropriate places such as outside premises whose business could be adversely affected for example: another food retailer, a top end quality clothes retailer, etc.

It would prove difficult to police the applicant to ensure there is no cause of obstruction or interference to other retailers in the area in which trade is taking place.

The bike looks rather unstable, particularly if the large canister is full of liquid.

The bike looks unattractive and would detract from the surrounding street scene and environment.

The food and drink that would be sold does not appear to be seasonal or synonymous with the seasons.

A precedent may be set for other street traders to apply to trade in this way. We have worked very hard to clear the town of pedlars and this type of trading, on the face of it, looks very similar in terms of how the public could conceivably view it.

Highways Enforcement Officers - Gloucestershire Highways would have concerns with where on the public highway the unit would be stopping to trade. Concerns would include possible obstruction being caused to users of the footway/highway, blocking of visibility splays etc.

Environmental Health and Cleansing - No Comments

Gloucestershire Constabulary - No Comments

Planning Enforcement Officer – The application is wholly inappropriate in Conservation Area.

3.2 Interested Parties

M.Maizia (La Scala investments co ltd, Beechwood Shopping Centre, High Street, Cheltenham) - I am writing to object about the mobile catering bicycle application 13/01040/STA.

The reasons for my objection is not for competition but for unfair competition which allows people to cherry pick the best time and location to trade in where we have to keep open all the time regardless of the weather or the trend of business just to cover the occupational costs . I also find this idea not feasible and impossible to trace or police should any breach of the rules and regulations, It is not in my habit or the way I operate to object for the sake of it for example I do find the the bicycle outside the municipal offices as a very descent and presentable offer which doesn't interfere with any other businesses. I would not object to this application if it's granted on the basis of being fixed not mobile and in a location where it is not affecting any other traders.

Amer Awan (Butler's Restaurant, 78-High Street Cheltenham) - This has came to my notice that some one has applied the licence for Mobile Catering Bicycle, I would like to give my opinion on that , first of all I would like to introduce my self, I own a Cafe Restaurant at High Street top end side, we are registered with council and pay £853 a month in business rates, which is a lot of money, we have invested in the business, and our intention is to continue the business as long as no fear or threat of unfair competition , this mobile catering idea had came up with a serious threat to existing food businesses of town . If it starts trading near my business I will be losing costumers, Obviously if it offers cheap coffee or hot or cold drinks, who will come to our place then, Also if it starts selling sandwiches or food then what would I do , Also a potential risk of health and safety , by causing more litter in town, Also potential risk of drink or food quality compromised by due to limited means of electricity and water. Keeping in view of all the above and possibly more which I can't think of at the moment I would strongly object to issue licence to this type of catering idea. I look forward to see our local council take steps to protect the existing business of the town.

Alun Griffiths (Spectre, 73-75 High Street, Cheltenham) – The traditional Pub Spectre is located on the High Street, I would like to bring to your attention my objection to a license application that has been handed in to you (13/01040/STA) the application is for a mobile catering bicycle to openly sell hot and cold food anywhere from Montpellier to the High St. This application if given would enable this seller to basically pitch up outside my venue and detract customers from entering my premises by basically stealing my custom, as a business that is well established and run to the highest of standards I feel this would be a travesty.

Mark Daniel (Montpellier Resident) - As a Montpellier resident, I oppose this application for innumerable reasons. It will be unsafe. It will slow traffic. There is no evidence that it will be selling bona fide local food from local suppliers. It will be in direct competition with rival traders who have paid business rates and freehold prices. It will further obstruct pavements which, thanks to the shiftlessness of the Council, are already perilous to pedestrians thanks to cyclists, illegal parking athwart pavements and uneven surfaces. Above all, if a licence were granted, the Council can expect immediate legal action from those who applied

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for licences for rickshaws (demonstrably safe, visually attractive, not laden with scalding liquids, providing a valuable service and exclusively on the roads) and were refused on the grounds that Councillor Jeffries and others could not be bothered to research the necessary licensing provisions and who therefore lost substantial sums of money. This ugly mobile food trolley will slow traffic, solicit business on public walkways and run – and cause – far greater risks than the more mobile rickshaws.

Robert Evans (Kitchenkind LLP, 1A Queen’s Circus, Montpellier, Cheltenham) - I would like to object to this trading application. Street Trading Consultation (13/01040/STA) I am the owner of a high quality Kitchen studio in Montpellier. Our business would be adversely affected if this trader were to set up outside our studio. It would also detract from the quality feel of the area and deprive rate paying food retailers of revenue. Finally it would be very difficult to check that the vendor is abiding by their licence and not blocking the footpaths. Do we really want to lose our cafes and restaurants in favour of a fleet of bicycle vendors?

Gavin Thompson (Gusto, 12 Montpellier Walk, Cheltenham) - I write in concern about the application for a bike to be selling hot drinks and food in Montpellier. This would be in direct competition with mine and many other businesses in Montpellier. There are already many cafes, bars and restaurants. I have had to go through stringent applications for my business and considering the negative comments I received I have no doubt that this would be frowned upon by the council. The bike in the picture certainly wouldn't add anything to the visual appeal of the area. I'm not sure how they would plan to monitor the congestion which I know from first hand experience is a concern of the council!

Michele Pemberton (L’una Design Ltd, 6 The Courtyard, Montpellier Street, Cheltenham) - Generally we do not object to applications but on this occasion we completely agree and object as follows:

There would be no control on where the bike may be parked to sell the food and drink within the area the applicant intends to trade and therefore could be open to trade in totally inappropriate places such as outside premises whose business could be adversely affected e.g: another food retailer, a top end quality clothes retailer, etc. It would prove difficult to police the applicant to ensure there is no cause of obstruction or interference to other retailers in the area in which trade is taking place. The bike looks rather unstable, particularly if the large canister is full of liquid. The bike looks unattractive and would detract from the surrounding street scene and environment. The food and drink that would be sold does not appear to be seasonal or synonymous with the seasons.

Showcase (Fancy Dress Shop 13 Montpellier Arcade Cheltenham) – I wish to object to the application for a cycle to sell food around the town, especially in our lovely Montpellier area. The cycle would be totally unsuitable for the streets and we have more than enough food outlets already within the town. Surely we are trying to not have this type of mobile trading within the town – we do appear to have got rid of quite a few pedlars – bit of a pain!!

4. Licensing Comments

- 4.1 The Committee must determine the application with a view to promoting the Council’s adopted policy.
- 4.2 This report has been brought to member’s attention as prescribed in the scheme of delegation set out in the Street Scene Policy (page 6) adopted on 1st April 2013, whereby all new street trading applications are referred to the Licensing Committee.
- 4.2 Members are to note that the comments made by the Highways Enforcement Officer are in relation to the location(s) applied for by the applicant. The current policy attaches conditions to street trading consent which state that a street trader may 'not trade or operate the Unit in such a way as to cause obstruction of the Street or danger or annoyance to persons using the Street. Members must also consider the emergency vehicle route which must remain clear at all times on the High Street and Promenade. Bearing this in mind members must be mindful to ensure that that location is suitable for such a unit to be positioned.

- 4.3 The proposed trading location(s) of the mobile unit include the High Street and Promenade pedestrianised areas. Gloucestershire Highways have advised that there are currently traffic orders in place that do not permit cycles from using the pedestrianised areas and any change to the current rules would require these orders to be amended. This would therefore mean that if consent were to be granted the unit would not be permitted to be ridden but must be dismounted and pushed.
- 4.4 Officers also have concerns that the High Street and Promenade already have a high volume of street trading and tables and chairs consents that may be an obstruction for a mobile unit. The High Street currently has the following street traders licensed:

Stall Type	Stall Location
Flower Stall	High Street outside HMV
Fruit Barrow	High Street outside Beechwood Shopping Centre
Ice Cream Cart	High Street outside C&G
Children's Roundabout (School holidays)	High Street outside French Connection
Ice Cream Cart	High Street outside Marks and Spencer
Turkey Van (Christmas Only)	High Street outside Monsoon and Oasis
Flower Stall	Corner of High Street and Pittville Street
Farmers Markets	Promenade outside Cavendish House
Arts and Crafts Markets	Promenade outside Cavendish House
Continental Markets	Promenade outside Cavendish House
Christmas Market	Promenade outside Cavendish House
Coffee Van	Promenade outside Cavendish House and Long Gardens
Flower Stall	Promenade/Ormond Terrace

- 4.5 In light of the above members must consider if a unit measuring 8ft (L) x 3ft (W) would be able to pass in restricted locations such the small area of pavement outside C&G. The pavement at this particular point for example is no more than 16ft wide, the ice cream cart measures 8.2ft x 3.3ft which leaves little room for pedestrians and the mobile catering unit to pass without being forced to walk on Rodney Road.
- 4.6 Officers have concerns that the use of pedestrianised areas by a mobile street trading unit might cause accidents and injury to pedestrians.
- 4.7 Traffic congestion is also a huge concern, in particular the use of the Promenade leading up to Montpellier due to the incline and the bottle neck caused by the central reservations on the road by the Queens Hotel. Congestion would potentially cause tailbacks, other road users being unable to overtake which in turn could result in frustrated road users and the increased risk of collisions and accidents as a result of reckless overtaking by motorists.
- 4.8 Members must determine this application in respect of the location as shown at **Appendix B**. A full consultation has taken place based on this location only. Alternative locations must be subject to an individual consultation process.
- 4.9 In accordance with the current Street Scene Policy members must determine and consider if an application of this type positively enhances the enjoyment and reputation of the town as a tourist and leisure destination whilst being in keeping with the streetscape.

Report Author

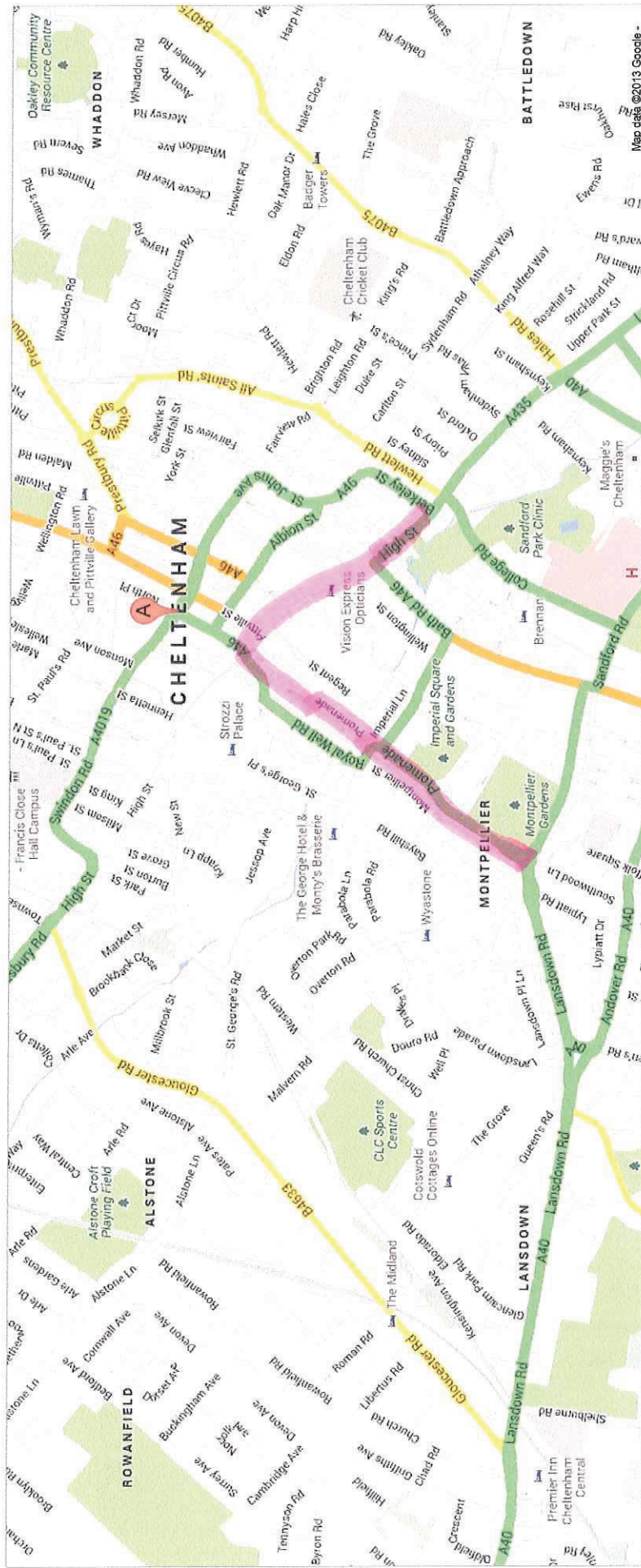
Contact officer: Mrs Amelia Byres
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264217

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To see all the details that are visible on the screen, use the "Print" link next to the map.



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Cheltenham Borough Council

Licensing Committee – 26 July 2013

Review of a Private Hire Driver’s Licence

Mr John James Carr - PHD073

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr John James Carr holds Private Hire driver’s licence PHD073 which is due for renewal on 10th May 2016.
- 1.2 Mr Carr holds a private hire vehicle licence (PHV053), which is a Renault Laguna, registration number NT03 JXB.
- 1.3 Mr Carr was subject to a vehicle inspection on Thursday 4th July 2013 by Police Sergeant (PS) Tony Wallace currently stationed at the Roads Policing Unit at Bamfurlong, Gloucestershire Constabulary.
- 1.4 Police Sergeant (PS) Tony Wallace, contacted the Licensing Office immediately to advise that the vehicle (PHV053) had been inspected at 15.40 hours on Albion Street, Cheltenham. PS Wallace advised that the vehicle had been stopped due to witnessing the driver using his mobile phone whilst driving.
- 1.5 PS Wallace advised that when inspected, three tyres were worn below the legal limit. PS Wallace advised that the vehicle was served with an immediate prohibition notice and Mr Carr has been summonsed to appear in Court for the motoring offences. PS Wallace explained that the defects were the worst tyres he had personally seen on any vehicle for some time. Photographs were taken at the time of the inspection and are attached at **Appendix A**.
- 1.6 In light of this the Public Protection Manager has taken the view that Members of Committee should be aware of the incident because of:
 - 1.6.1 The nature of the offence; and,
 - 1.6.2 The need to ensure that Mr Carr is judged to be a fit and proper person to hold a Private Hire driver’s licence.
- 1.7 **The Committee is recommended to resolve that:**
 - 1.7.1 **Mr Carr’s private hire driver’s licence be continued with no further action because the Committee is satisfied that Mr Carr is a fit and proper person to hold such a licence, or**
 - 1.7.3 **Mr Carr’s private hire driver’s licence be revoked as the Committee considers Mr Carr is not a fit and proper person to hold a private hire driver’s licence because he failed to maintain his vehicle in a roadworthy condition.**

1.8 Implications

1.8.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

1.8.2 Legal

There is a right of appeal against a refusal to grant a licence which, in the first instance, is to the Magistrates' Court.

The Borough Council has the ability to suspend or revoke a private hire driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Maintenance of Vehicle

3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.

3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers and vehicle owners responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An

approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.

- 3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make either individually or all of them. The use of these tyres must be supported by a method statement (such as the manufacturers handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS) must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

4. Licensing Comments

- 4.1 The Licensing Section was informed about the incident by Gloucestershire Constabulary on 5th July 2013 at approximately 8.30am. Mrs Amelia Byres immediately suspended the vehicle and telephoned Mr Carr to advise that the vehicle was suspended. Mr Carr explained that he was currently at the garage having the tyres replaced. Mr Carr produced the vehicle for inspection at the Licensing Office by 2pm the same day.
- 4.2 The vehicle was inspected by Mrs Amelia Byres who confirmed that the vehicle had three new tyres fitted to the vehicle, the suspension notice was lifted at this point.
- 4.3 Mr Carr was interviewed by Mrs Amelia Byres and Mr Philip Cooper; he explained that he was in stationary traffic on Thursday 4th July at approximately 14.00 hours, he explained that his operator A2B had allocated him a job to collect passengers from a local school. He explained that he was in stationary queuing traffic on Albion Street when his mobile telephone rang. He saw from the caller display on the mobile telephone that it was his son calling and felt that as the traffic was stationary he had time to answer the mobile telephone quickly before the traffic started to move again.
- 4.4 He explained that the vehicle was then pulled over by Police Sergeant (PS) Tony Wallace and consequently inspected. On inspection of the vehicle PS Tony Wallace found that the vehicle (PHV053) had three defective tyres. Mr Carr was informed that his vehicle was served with an immediate prohibition notice and that he had been summonsed to Court for the motoring offence, using a mobile phone whilst driving.
- 4.5 Mr Carr explained that he had replaced the tyres on the vehicle at the beginning of June however he had purchased used, part-worn tyres instead of new tyres. He explained that this was the first time he had bought second-hand, part worn tyres and had not appreciated how little wear you get from them. He explained that since replacing the tyres at the beginning of June he had done approximately 5000 miles using them.
- 4.6 Mr Carr went on to say that he knew that the tyres were not perfect, however his vehicle is due to be tested in July for the six monthly MOT and fitness test therefore he decided to keep the tyres on the vehicle and use them until the 6 monthly MOT and fitness test was due to be completed. He explained that this occasion was the first time that he had bought second hand, part worn tyres and that it was an error of judgement on his part.
- 4.4 Mr Carr explained that the vehicle was MOT tested on 5th July 2013, the 'pass' certificate for which he produced during the interview. He explained that the vehicle had passed a private MOT test that morning in which no defects or advisories were listed.
- 4.5 When asked if Mr Carr had been told by his operator or colleagues to change the tyres in recent weeks he advised that no one had mentioned the tyres to him previously.
- 4.6 The operator who had dispatched the driver, Gordon Milne from A2B, gave a statement in relation to the vehicles fitness which is attached at **Appendix B**.

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- 4.7 Mr Carr has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.8 The Committee must be satisfied that Mr Carr is a fit and proper person before agreeing to the continuation of his licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.
- 4.9 The maintenance of all licensed vehicles should be the priority for the vehicle proprietor as the transportation of the public is a position of trust.

Background Papers**Service Records****Report Author****Contact officer:** Mrs Amelia Byres**E-mail:** licensing@cheltenham.gov.uk**Tel no:** 01242 264217





CHELTHENHAM BOROUGH COUNCIL

STATEMENT OF WITNESS

(Criminal Procedure Rules, 2005 r27.1(1);
Criminal Justice Act 1967, s.9 Magistrates' Courts Act 1980,s. 5B)

Statement of GORDON CLARK MILNE

Age of witness: Over 18

Occupation of witness: OFFICE MANAGER

This statement consisting (of 2 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the 16TH day of JULY 2013

Signed 

On the 4th July the date of the offence Mr John Carr licensed driver of private hire vehicle number 053 advised me that he had been stopped by the police whilst driving and was unable to continue to work until he had replaced three tyres on his vehicle he also admitted that had had been using a mobile phone whilst in control of his vehicle. Mr Carr is a night time driver who occasionally works in the afternoon.

He was originally employed by A 2 B Taxi's as a control operator but later became a driver on a agency basis supplying his own vehicle and being responsible for the maintenance of his vehicle. It was also explained to him that he was responsible for ensuring that he and

Signed 

Witnessed by 

his vehicle complied fully with all licensing conditions specified by Cheltenham Borough Council. He also had an obligation to comply with all company conditions.

On several occasions I advised Mr Carr to make sure that he and his vehicle were fit for the purpose and make sure that tyres, lights and condition of the vehicle were compliant on no occasion did Mr Carr say that his vehicle was not fit for the purpose of carrying fee paying passengers.

Several drivers had expressed concern about the condition of his tyres over a period of time however this has only just been disclosed to the company.

Signed

Gordon J.L.

Witnessed by

[Signature]

Cheltenham Borough Council

Licensing Committee – 26 July 2013

Review of a Private Hire Driver's Licence

Mr Tohur Uddin - PHD660

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Tohur Uddin holds Private Hire driver's licence PHD660 which is due for renewal on 7 December 2013.
- 1.2 Mr Uddin drives a private hire vehicle licence (PHV362), which is a Vauxhall Vectra, registration number VE06 DJX.
- 1.3 Mr Uddin was subject to a vehicle inspection on Sunday 7th July 2013 by Police Sergeant Tony Wallace, currently stationed at the Roads Policing Unit at Bamfurlong, Gloucestershire Constabulary.
- 1.4 Police Sergeant Tony Wallace contacted the Licensing Office immediately to advise that the vehicle (PHV362) had been inspected at 01.28 hours on Millbrook Road, Cheltenham. PC Wallace advised that two tyres were found to be worn below the legal limit. Photographs of the tyres are attached at **Appendix A**.
- 1.5 In light of this the Public Protection Manager has taken the view that Members of Committee should be aware of the incident because of:
- 1.5.1 The nature of the offence; and,
- 1.5.2 The need to ensure that Mr Uddin is judged to be a fit and proper person to hold a Private Hire driver's licence.
- 1.6 **The Committee is recommended to resolve that:**
- 1.6.1 **Mr Uddin's Private Hire driver's licence be continued with no further action because the Committee is satisfied that Mr Uddin is a fit and proper person to hold such a licence, or**
- 1.6.2 **Mr Uddin's Private Hire driver's licence be revoked as the Committee considers Mr Uddin is not a fit and proper person to hold a Private Hire driver's licence because he failed to maintain his vehicle in a roadworthy condition.**

1.7 Implications

- 1.7.1 Financial

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125

- 1.7.2 Legal The Borough Council has the ability to suspend or revoke a private hire driver's licence with immediate effect if necessary in the interests of safety. There is a right of appeal against a suspension or revocation of a licence which, in the first instance, is to the Magistrates' Court.

Contact officer: Vikki Fennell
E-mail: Vikki.Fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

- 2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

3. Policy Considerations

- 3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.
- 3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.
- 3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

Maintenance of Vehicle

- 3.5 The vehicle, all of its fittings and any attached equipment shall at all times when the vehicle is in use or available for hire, be kept in a clean, safe, tidy and efficient state, and must also comply with all relevant statutory provisions including in particular those contained in the Road Vehicles (Construction and Use) Regulations 1986.

Tyres

- 3.6 All tyres fitted to the vehicle or carried as a spare must comply with the Motor Vehicles (Construction and Use) Regulations 1986 and Motor Vehicle (Tests) Regulations 1981.
- 3.7 The carrying and use of Space saver tyres and tyre sealant kits will only be approved with the support of a method statement. The method statement will detail the drivers' and vehicle owners' responsibility with regard to the maximum permitted speed and restrictions of use and highlight that they are ONLY a temporary measure to complete the journey in which the puncture occurred. An approved repair to BS AU159 or a replacement tyre must be undertaken before any further fares are carried.
- 3.8 Run flat tyres fitted to any vehicle by the manufacturer will not be replaced by any other type or make, either individually or all of them. The use of these tyres must be supported by a method statement (such as the manufacturer's handbook for the vehicle) specifying the capability and restrictions of use following a puncture. In all cases the Tyre Pressure Monitoring System (TPMS)

must be working correctly and if required, be reset when a tyre(s) are renewed or replaced. Worn or damaged run flat tyres must be replaced by the same make and size.

4. Licensing Comments

- 4.1 The Licensing Section was informed by PS Wallace on 7th July 2013 at 21.45. The email was opened and read by Mrs Amelia Byres at approximately 08.15am on Monday 8th July 2013. Mrs Byres immediately suspended the vehicle.
- 4.2 The vehicle licence is currently licensed to Mr Graham Foley who owns a number of licensed private hire and hackney carriage vehicles that he supplies to licensed drivers within Cheltenham Borough. Mr Foley explained that the vehicle was leased to Mr Uddin and that he would contact Mr Uddin to advise that the vehicle had been suspended until the vehicle was produced for inspection by the Licensing Section.
- 4.3 Mr Foley also explained that licensed drivers who lease licensed private hire or hackney carriage vehicles from him are contractually obliged to ensure that the tyres and brakes are maintained in a roadworthy condition at all times. A copy of the contract between Mr Foley and Mr Uddin is attached at **Appendix B**.
- 4.4 Mr Uddin produced the vehicle for inspection at the Licensing Office at 16.45pm on Monday 8th July 2013, 9 hours after the suspension notice had been issued by the Licensing Section.
- 4.5 The vehicle was inspected by Mrs Amelia Byres who confirmed that the tyres had been replaced. Mr Uddin explained that he had gone straight home following the vehicle being stopped by the police and informed his Private Hire Operator, Starline, that he could not accept any further jobs until further notice.
- 4.6 Since the incident Mr Uddin was interviewed by Mrs Amelia Byres and explained that he was travelling along Millbrook Street at approximately 01.28am when the Police Officer pulled his vehicle over.
- 4.7 The Police Officer inspected the vehicle and found that two tyres were below the legal limit. Mr Uddin explained that he checked his tyres on Wednesday 3rd July and changed the front tyre however did not see the other tyres were bald on the inside edges of the tyres. Mr Uddin explained that he fully accepts responsibility for the tyres and explained that he must have missed how low the tyres were. He went on to explain that he was carrying a passenger at the time he was stopped by the police. The Police Officer advised Mr Uddin that he could take the passenger to their destination and stop work immediately afterwards, which Mr Uddin confirmed he did.
- 4.8 The Licensing Office has confirmed that Mr Uddin logged off Starline's system at 2.00 hours and did not carry out any more work until the vehicle had been repaired and inspected by Mrs Amelia Byres at 16.45pm on Monday 8th July 2013.
- 4.9 Mr Uddin has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 4.10 The Committee must be satisfied that Mr Uddin is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

Report Author

Contact officer: Mrs Amelia Byres
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 264217



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7 Bramley Road
Cheltenham
GL51 7LL

PRIVATE HIRE VEHICLE RENTAL AGREEMENT

This rental agreement, dated 22/04/2013 is between Mr Graham Michael Foley of 7 Bramley Rd Cheltenham GL51 7LL, trading as Loyal Cabs of Cheltenham and Mr Tohur Uddin of 240 Bath Rd, Cheltenham GL53 7NB

From this agreement date Mr Uddin agrees to hire Vauxhall Vectra Life CDTI 120, VE06 DJX 5 DOOR ESTATE, listed by DVLA as SILVER. V.I.N. No. W010ZCF3561122155.

The hire term is rolling week to week with no minimum or maximum duration but requires ONE WEEKS NOTICE by either party to terminate the agreement. The agreement may be terminated without notice if the terms of this agreement are broken.

The rental rate is set at £105.00 per week, defined as from 0001hrs Monday to 2359hrs Sunday. Part-week rental will be charged at £20.00 per day Sun-Fri and £30.00 Saturday. Rent is paid in arrears on the first Monday after the agreement date. Rent may be paid in cash or by bank transfer. Cheques are not acceptable.

The rent includes all servicing and maintenance as required, excluding tyres, brake discs, brake pads and brake shoes. The vehicle will be supplied with part-worn tyres with a minimum tread depth of 3mm and will require the same minimum tread depth to be present on all tyres at the end of the rental term. A charge of £56.00 per tyre that does not comply will be added to the final rental, including the spare tyre.

The rental includes road fund licence and C.B.C. Licensing costs.

The rental includes the replacement of defective bulbs. These must be replaced replaced at Cheltenham Renault, Tewkesbury Rd. If you need to replace bulbs out of garage hours you will be expected to bear the cost yourselves.

The correct oil is always available at Cheltenham Renault, Tewkesbury Rd

Mr Uddin agrees to check all fluid levels on a regular basis and make available the vehicle for spot-checks and servicing having been given a reasonable period of notice.

The rental does not include breakdown cover. Mr Foley will provide assistance with recovery within a 10 mile radius of Cheltenham between the hours of 9am and 5.30pm. IT IS STRONGLY RECOMMENDED THAT MR UDDIN TAKES OUT HIS OWN BREAKDOWN COVER.

Mr Uddin provides appropriate FULLY COMPREHENSIVE INSURANCE for the full term of the hire, a copy of which will be held by Mr Foley, and agrees to bear the cost of insurance changes as required if the hire vehicle is off the road due to mechanical breakdown.



Mr Uddin agrees to not take the vehicle outside of the United Kingdom at any time during the rental period.

Mr Uddin agrees to keep and treat the vehicle as though it were his own, e.g. driving it with care, keeping it, within reason, clean and tidy inside and out.

Mr Uddin agrees to report any damage or fault to Mr Foley immediately. If low-level damage is done to the vehicle, below the value of insurance excess and no other vehicle or property is involved, Mr Uddin agrees to negotiate repairs with Mr Foley.

Mr Uddin agrees to make the vehicle available for a period of seven days prior to it's Cheltenham Borough Council annual inspection. A replacement vehicle will be made available for this period and Mr Uddin agrees to bear the cost of insurance on the replacement vehicle during the period of seven days.

Mr Uddin agrees to return the vehicle at the end of the agreement with sufficient fuel to keep the gauge above the red zone. If the vehicle is returned empty a charge for nine litres of fuel will be added to the final rental.

Mr Foley agrees to allow Mr Uddin full use of the vehicle at all times during the rental period.

I agree to the terms and conditions set out above



Tohur Uddin

I agree to the terms and conditions set out above



Graham Foley, Loyal Cabs

Cheltenham Borough Council**Licensing Committee – 26th July 2013****Consultation Response to the Proposal to Adopt the Late Night Levy in Cheltenham****Report of the Licensing & Business Support Team Leader****1. Summary and Recommendation**

1.1 The Licensing Committee met on Friday, 5 July 2013 to consider its response to the proposal to adopt the Late Night Levy (“LNL”) in Cheltenham.

1.2 This report outlines the Committee’s response.

1.3 The Committee is recommended to:

1.3.1 Approve the response; and

1.3.2 Agree the response be submitted as part of the consultation.

1.4 Implications**1.4.1 Financial**

Contact officer: Sarah Didcote
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 26 4125

1.4.2 Legal

The authority is currently undertaking a consultation on whether or not to adopt the Late Night Levy. Once the consultation period has closed the responses to the consultation will be considered and a decision will be taken on whether or not the Late Night Levy should be adopted and if it is adopted how it should operate.

Contact officer: Vikki Fennell
E-mail: vikki.fennell@teWKesbury.gov.uk
Tel no: 01684 272015

2. Background

2.1 The Police Reform and Social Responsibility Act 2011 allows licensing authorities to make use of a LNL aimed at reducing late night alcohol related disorder.

2.2 The Licensing Committee has considered and formulated its response to Cabinet’s proposals to adopt the LNL in Cheltenham including the appropriateness and benefits of Cheltenham Borough Council introducing the LNL.

2.3 The levy will allow licensing authorities to raise a contribution from late opening alcohol retailers towards policing the late night economy. It will be a local power that Cheltenham can choose to adopt for its area.

2.4 The Committee’s response to the consultation questionnaire sent out is as follows: -

3. Consultation Response

- 3.1 Question 1 – The Licensing Committee was asked if they were in support of the Late Night Levy being introduced in Cheltenham.**
- 3.1.1 The majority of the committee were in support of the LNL being introduced (8 to 1 in favour). One member did note that as other neighbouring areas were not adopting the levy businesses in Cheltenham could be at a disadvantage.
- 3.2 Question 2 – The Licensing Committee was asked if they agreed that the late night supply period should be set between 00:01 and 06:00?**
- 3.2.1 The majority of the committee were in favour of this proposal with an 8 to 1 in support of the proposition.
- 3.3 Question 3 – The Council has proposed not to exempt any premises from liability to pay the levy. The Licensing Committee was asked whether they thought the Council should not exempt any premises**
- 3.3.1 The committee were unanimous in agreeing that if the LNL was introduced the Council should not exempt any premises from the imposition of the LNL.
- 3.3.2 The committee were asked that should the Council decide to grant exemptions in certain circumstances what would their views be in relation to the following: -
- 3.3.3 **Premises with overnight accommodation:** - The majority of the committee were in favour of not granting an exemption to these premises, with 8 to 1 in favour.
- 3.3.4 **Theatres and Cinemas:** - The committee were split on this proposed exemption, with 5 to 4 in favour of not granting the exemption. Members noted that if premises opened beyond midnight they could contribute towards disorder and therefore should not be exempt.
- 3.3.5 **Bingo Halls:** - The majority of the committee were in favour of not granting an exemption, with 7 to 2 in favour. The consensus was that most bingo halls would be closed by midnight in any event.
- 3.3.6 **Community Premises:** - The committee were unanimous in agreeing that community premises should not be exempt from the LNL.
- 3.3.7 **New Years Eve:** - The majority of the committee were in favour of not granting an exemption for those premises that stay open beyond midnight on New Years Eve (6 to 3 in favour). It was believed that an exemption for those premises whose only late night authorisation is for New Year will benefit many premises.
- 3.4 Question 4 – It is proposed that premises actively participating in the local Nightsafe and Best Bar None schemes be eligible for the prescribed 30% reduction. The Licensing Committee was asked whether they agree that the two previously mentioned schemes be eligible for a reduction in the levy.**
- 3.4.1 The majority of the committee were in favour of this suggestion, with 6 to 3 in agreement. The committee commented that these schemes encourage businesses to join together to address some of the negative effects of selling alcohol so applying a discount would encourage others to join the scheme. A member did voice a concern that it could be difficult to make a decision about this if the members are not aware how successful the above schemes have been.
- 3.5 Question 5 – It is not proposed that premises in receipt of small business rate relief be eligible for a reduction of the levy. The Licensing Committee was asked whether they agreed with this.**

- 3.5.1 The majority of the committee were in agreement with this proposal, with 8 to 1 in favour of not granting a reduction in the LNL. The committee felt that as even small premises could have a considerable impact on their neighbours an exemption was not appropriate.
- 3.6 **Question 6 – The Licensing Committee was asked if there were any other qualifying business-led best practice schemes that should be in receipt of the 30% reduction.**
- 3.6.1 The committee did not propose any other business led best practice schemes.
- 3.7 **Question 7 – It is proposed that in order to use the levy in the most efficient and cost effective manner, rather than see the levy revenue split between two separate programmes, that agreement be reached with the Police and Crime Commissioner to develop a single programme delivered in partnership between the Council and the Police in line with guidance. The Licensing Committee was asked if they support developing a single programme delivered in partnership between the Council and the police.**
- 3.7.1 The committee were unanimous in principle that the police and Cheltenham Borough Council should work in conjunction on a single program delivered in partnership.
- 3.8 **Question 8 – The Licensing Committee was asked if they agreed that the net income from the levy should be split 30:70 between Cheltenham Borough and the Gloucestershire Police and Crime Commissioner.**
- 3.8.1 The majority of the committee were in favour of this proposal with 8 in favour and 1 abstention. It was commented that the split should have been more equal, 50:50. A member asked if it could be stipulated that the income was spent just in Cheltenham.
- 3.9 **Question 9 – The Licensing Committee were asked if they thought the Police and Crime Commissioner should receive a larger than 70% proportion of the net revenue.**
- 3.9.1 The committee were unanimous in their view that the Police and Crime Commissioner should not receive more than the 70% proportion of the net revenue
- 3.10 **Question 10 – The Council is proposing to develop a range of activities on which to spend its portion of the levy income which will be provided to tackle alcohol related crime and disorder during the late night supply period. The Licensing Committee was asked if they supported the range of proposed activities. (Funding for taxi marshals, CCTV improvements, Funding to support, promote and expand the work of Nightsafe, Best Bar None, Street Pastors etc., Joint Police and Council enforcement initiatives and Funding to support the Reducing Alcohol Related Violent Crime and Disorder initiative)**
- 3.10.1 The majority of the committee were in favour of this proposal with 8 in favour and 1 abstention. The committee commented that in order to maximise the effectiveness of the levy licensing authorities should be able to use it to fund any service which promotes the licensing objectives and the management of the night time economy which could also include street cleansing and the opening of public toilets for longer periods
- 3.11 **Question 11 – The Licensing Committee were asked if they had any suggestions on how the Council should spend its portion of the levy**
- 3.11.1 Members would like to see more street cleansing and additional toilet facilities, as above.
- 3.11.2 **Question 12 – The Licensing Committee were asked if they agreed that the Council should seek to implement the levy on the 1st April 2014?**
- 3.11.3 The majority of the committee were in agreement with this proposal, with 8 to 1 in favour of implementing the LNL on the 1st April 2014.

3.12 **Question 13 – The Licensing Committee were asked if they had any other comments to make regarding the proposed levy?**

3.12.1 The Committee did not have any further comments to make.

Background Papers

Service records.

Contact Officer

Contact officer: Louis Krog
E-mail: licensing@cheltenham.gov.uk
Tel no: 01242 775200