



CHELTENHAM

BOROUGH COUNCIL

Notice of a meeting of Licensing Committee

Friday, 4 October 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 Councillors Seacome, Stennett, Walklett and Whyborn	
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 6 SEPTEMBER 2013	(Pages 1 - 10)
5.	MINUTES OF SUB COMMITTEE MEETINGS None	
6.	REVIEW OF HACKNEY CARRIAGE DRIVERS LICENCE Mr Paul Spicer	(Pages 11 - 14)
7.	LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:	

		Information relating to any individual, Information which is likely to reveal the identity of an individual, Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
8.		REVIEW OF PRIVATE HIRE DRIVERS LICENCE Mr David Waring	(Pages 15 - 18)
9.		ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION	
10.		DATE OF NEXT MEETING 1 November 2013	

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

Licensing Committee

Friday, 6th September, 2013

2.30 - 4.15 pm

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

Minutes

1. APOLOGIES

None

2. DECLARATIONS OF INTEREST

None

3. PUBLIC QUESTIONS

None

4. MINUTES OF MEETING HELD ON 26 JULY 2013

Councillor Stennett confirmed he had given his apologies for the Licensing Committee on 26 July 2013. Upon this amendment it was resolved that the minutes of the meeting held on 26 July 2013 be agreed and signed as an accurate record.

5. MINUTES OF SUB COMMITTEE MEETINGS

None

6. APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - TABLES AND CHAIRS

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received in respect of O'Neills, 23 Montpellier Walk, Cheltenham. The premises have two public entrances, one on Montpellier Street and the other on Montpellier Walk. The applicant already had consent to place tables and chairs on both Montpellier Street and Montpellier Walk but were looking to extend the hours and to leave them on the highway overnight.

This application was submitted as a result of enforcement action. All premises in this area with tables and chairs consent were written to reminding them of their consent timings and conditions. These premises had not adhered to the condition of bringing the tables and chairs inside overnight.

Amelia Byres advised Members that the application is not to increase the number of tables and chairs on the highway but to extend the timings of the

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current consent and allow for the tables and chairs to remain on the highway overnight securely chained. The current consent allows the tables and chairs to be placed on the highway between 11.00 and 23.00.

Amelia Byres confirmed there was a mistake in paragraphs 1.5 and 1.7 of the report. The applicant requested the tables and chairs for customer use on Sunday to Wednesdays from 10.00 to 00.00 and Thursday to Saturdays from 10.00 to 01.00. The tables and chairs would therefore remain on the highway 24 hours per day and would be chained up overnight.

Members asked the following officer questions:

- When asked, Amelia Byres confirmed the application covered both sides of Montpellier Street and Montpellier Walk. If the application was granted it would be one consent covering the same times for both areas.
- When asked, Amelia Byres confirmed the tables and chairs would always be placed within the barriers and the barriers would be taken inside overnight

Ms Sharkey, Solicitor and Mr Paul Thomas, area manager attended the meeting and spoke in support of their application.

Ms Sharkey referred to the local residents concerns of noise and confirmed they would amend the table and chairs usage to midnight not 01.00. The premises is open at 10.00 and would like the table and chairs usage to be brought in line with this time. This would allow customers to sit outside from when the premise opens.

The flower pots would be placed either side of the doorway on Montpellier Walk and would be taken in overnight with the barriers. The tables and chairs are very heavy making them difficult to move in and out of the premises. Moving them inside in the evening would involve customers being asked to stand outside of the premises to enable the table and chairs to be moved and stored inside. The tables and chairs were expensive to buy and it was in their interest to ensure they were not damaged or stolen whilst being chained up overnight.

Members asked the following questions:

- When asked, Ms Sharkey confirmed the premises start serving breakfasts at 10.00 am.
- When asked, Mr Thomas said there would not be an issue with noise when chaining up the tables and chairs. The chain was protected by a cover to ensure the tables and chairs were not damaged. Once chained up, the tables and chairs would be stored well back against the building. The furniture was very robust and would take a lot to move.
- When asked, Mr Thomas confirmed that the tables and chairs could not be used by passers by. The configuration of storing the furniture had been done to deter passers by using the tables and chairs.
- When asked, Mr Thomas stated this furniture had been bought to replace light aluminium tables and chairs. The new furniture was extremely heavy and this stopped customers moving it around. Mr

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Thomas said that passer by would need a car to pull the furniture as it was so heavy.

- A Member asked about other establishments in the area and what time their table and chairs consent ceased each night.
- Amelia Byres confirmed that Strada has consent from 10.00 to 00.30, Indian Voojan has consent from midday to 23.59 and the Wine Bar has consent from 10.00 to 00.30 on Friday and Saturday, 11.00 to 11.00 on Sundays and 10.00 to 00.00 on Monday to Thursdays.
- A Member felt that midnight was a sensible time as there were residents in the area.
- A Member felt that if this consent was granted it would encourage other applications to be made resulting in additional table and chairs in this area.
- Amelia Byres reminded Members that this application had been submitted as a result of enforcement letters being sent out from the Licensing Department reminding premises to adhere to their consent times. This was the only application that had been received at the moment requesting an extension of hours.
- When asked, Amelia Byres and Ms Sharkey confirmed the premises has public liability insurance of up to £5 million pounds.
- A Member felt there was a lack of space in Montpellier Street and was concerned about this.
- A Member asked how the applicant would enforce the consent if granted.
- Mr Thomas confirmed that the enforcement issue had not been customers using the tables and chairs after their consent time but leaving the tables and chairs outside. The application had originally sort consent for customers to use the tables and chairs until 01.00 but had now amended this time to 00.00. This area would be closed down at that time.
- A Member asked if the barriers were still in use and raised concern with overcrowding at night outside of the premises.
- When asked, Mr Thomas confirmed the barriers are in use and said that door staff are present at weekends to ensure customers remain inside of the barriers.

In summing up Ms Sharkey stated again that stacking the furniture up outside at night had been the fault of the premises but they had not allowed customers to use the tables and chairs after their consent time. Since securely locking the furniture up outside at night, there had been no injuries or problems caused. Moving the heavy furniture in at night would result in customers being asked to move outside of the premise to enable the furniture to be moved inside.

Members were advised that they had three decisions to vote for:-

1. Upon a vote it was unanimously

RESOLVED that customers were permitted to use the table and chairs on the highway between 10.00 and midnight.

2. Upon a vote it was (9 for, 0 against, 1 abstention)

RESOLVED that two plant pots are permitted to be placed on the highway outside of the premises in Montpellier Walk. The plant pots are to be taken inside each night.

3. Upon a vote it was (5 for, 5 against) The Chairman used his casting vote to refuse the application.

RESOLVED that the application to chain the tables and chairs overnight be refused as the application falls outside the provision of the current Street Scene Policy.

Ms Sharkey asked that the applicant is given a time allowance to arrange for the existing furniture to be replaced.

Members discussed the decision and the fact that the applicant would now be replacing the existing furniture with aluminium table and chairs.

The Chairman reminded Members that a vote had been taken and the decision had been made. He advised the applicant that a new application would need to be made for the new furniture but it would only be brought to this Committee if objections were received.

7. APPLICATION TO PLACE AN OBJECT ON THE HIGHWAY - TABLES AND CHAIRS

Amelia Byres, Senior Licensing Officer, introduced the report as circulated with the agenda.

An application had been received from Mr Ansar Ali in respect of Soho Bar, 2 Rotunda Terrace, Montpellier Street, Cheltenham. The applicant wishes to place 12 chairs and 6 tables on the pavement outside 2 Rotunda Terrace.

Amelia Byres advised Members this premises has an existing consent and as a result of an enforcement letter sent out to all premises in this area, the applicant was seeking an extension of the timings of the current consent. The application sought consent for the following times:

Monday to Wednesday 10.00 – 00.30
Thursday to Saturday 10.00 – 01.30
Sunday 10.00 – 23.30

A local resident had objected to the application as detailed in point 4.2 of the report.

Members asked the following Officer questions:

- When asked, Amelia Byres confirmed the latest premises in this area with tables and chairs on the highway is The Montpellier Wine Bar at 00.30.

Mr Ali and Mr Mannan, directors of the business attended the Committee and spoke in support of the application.

Mr Ali stated that the tables and chairs were left out later than their consent due to a misunderstanding. At present customers were asked to move indoors at the end of the table and chair consent which caused problems as the premise is open until 01.30.

Mr Mannan explained that they wanted to bring the tables and chairs consent in line with their opening times on the premises licence. The use of a barrier would also make it easier for crowd control.

This would stop problems occurring when customers are asked to move inside. Customers could not be stopped from going outside after 01.00 to smoke.

Members asked the following questions:

- A Member raised concern over the timings and felt 01.00 was too late for local residents and their sleep would be disturbed.
- Mr Mannan stated that he could not stop members of the public from going outside in the Montpellier area. People come from all over the country to visit Cheltenham's nightlife which is a prime position and the whole town benefited from this. The hours requested should be brought in line with other premises in the area.
- When asked, Mr Ali confirmed the resident who had objected had not made direct contact with the premises. Both shops next door to the premises had commented on how the premises had improved the area and how well it is managed.
- Members felt the timings should be brought in line with other premises in the area.
- When asked, Amelia Byres confirmed the premises close by, Montpellier Wine Bar, had consent for tables and chairs use from 10.00 to 00.00 on Monday, Tuesday, Wednesday and Thursdays, 10.00 to 00.30 on Friday and Saturdays and 11.00 to 11.00 on Sundays.

In summing up, Mr Mannan said the reason they had requested an extension of hours for the use of tables and chairs was not to encourage customers to stay outside but to enable customers to be kept within the boundary using barriers. When the table and chairs boundary is taken away, alcohol is still served in the premises and they would not be able to control this boundary. The sole intention of this application was to enable the crowds outside to be managed in a better way.

Councillor Whyborn proposed an amendment to the recommendation that the consent be granted with the same times as the Montpellier Wine Bar. Councillor Thornton seconded this.

If granted the tables and chairs consent would be as follows:

Monday – Thursday 10.00 to 00.00
Friday – Saturday 10.00 to 00.30
Sunday – 11.00 to 11.00

Upon a vote it was unanimously

RESOLVED that the amended application be approved for a tables and chairs consent for the following times; on Monday – Thursday 10.00 to 00, Friday – Saturday 10.00 to 00.30 and Sunday 11.00 – 11.00 because Members feel the application is compatible with the current Street Scene Policy

8. HACKNEY CARRIAGE DRIVER APPLICATION

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received from Mr Shamsuz Zaman for a Hackney Carriage driver's licence.

Mr Zaman has convictions on his driving licence, details of which are contained in the enclosed background papers.

Amelia Byres advised the Committee that Mr Zaman attended the Licensing Committee in January 2012 with the same application. The same points were on Mr Zaman's driving licence as shown in the background papers then. All facts were the same as then, his penalty points would be removed from his DVLA drivers licence in November 2013.

Members asked the following Officer questions.

- When asked, Amelia Byres confirmed that Mr Zaman did not have passengers at the time of the offence. He was using the vehicle for personal use whilst being insured for business purposes only
- A Member stated that Mr Zaman had used a vehicle whilst on trade plates for business use without the correct insurance.
- When asked, Amelia Byres advised Members that the Policy states there should be 5 years free from conviction.
- When asked, Amelia Byres confirmed that Mr Zaman is currently a licensed taxi driver with Gloucester City Council.

Mr Zaman attended the Committee and spoke in support of his application. He explained that he thought he was insured for business use when using the vehicle on trade plates, this was a misconception. As detailed in the interview notes in the background papers, Mr Zaman stated that he thought the vehicle had been registered under the businesses trade licence. This was a mistake on his behalf and had no other penalty points since then. Mr Zaman said his DVLA points would be removed from his licence soon as nearly 4 years has passed since the date of the offence.

Members asked the following questions:

- Amelia Byres clarified to Members that Mr Zaman's DVLA penalty points would be removed from his licence after 4 years had lapsed. The adopted Policy states that the applicant should have 5 years free of convictions.
- A Member suggested if granted, that the licence should be for 12 months only. Amelia Byres referred Members to point 4.4 of the report which advised Members if they are minded to grant the licence, they have the option of granting a 1 year or 3 year licence.

- The Chairman agreed with the member if granted, the licence should be approved for 1 year with Officer delegation to renew subject to a clear DBS check and DVLA driver's licence.

In summing up Mr Zaman advised the Committee that he had learnt his lesson and had suffered as a result of his penalty points. He said he had been a taxi driver for Gloucester City Council for 3 and a half years, he was now a more sensible driver and if this licence was granted he would respect and adhere to the conditions.

Members had the following recommendations to vote on:

1. The Committee is recommended to resolve that Mr Zaman's application be granted as Mr Zaman is a fit and proper person or
2. that the application be refused on the grounds that Mr Zaman is deemed not to be a fit and proper person.

Upon a vote, it was (9 for and 1 abstention)

RESOLVED that Mr Zaman's application be granted for 1 year as Mr Zaman is a fit and proper person. Officers are given delegated authority to renew the licence subject to a clear DBS check and DVLA driver's licence.

9. HACKNEY CARRIAGE DRIVER REVIEW

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. This is a review of Mr Samir Jamshidi's Hackney Carriage Drivers Licence.

Mr Jamshidi obtained 6 penalty points on his DVLA driver's licence in May 2013 for speeding at 106 miles per hour with a passenger in his vehicle. Mr Jamshidi immediately reported the offence within the specified time frame to the Licensing department and brought in the official paperwork detailing the offence. Amelia Byres advised Members that this was Mr Jamshidi's first offence whilst being a licensed driver with Cheltenham Borough Council.

Mr Jamshidi attended the meeting and spoke in support of his licence. He explained that his passenger was a college student who had continually asked him to drive faster back to the Fire College in Moreton in Marsh. When the Police pulled him over Mr Jamshidi said he thought he had been driving at 85-90 mph, he was actually driving at 106 mph.

Mr Jamshidi provided a letter from the passenger, a copy of the letter is provided as a supplement to this agenda item. Mr Jamshidi stated that he was at fault as he was the driver of the vehicle and would not repeat this again.

Members asked the following questions:

- A Member stated that they could not understand why the passenger needed to get back to the fire college so quickly.
- Mr Jamshidi said the passenger didn't give a reason other than he needed to get there quickly.

- The Chairman read a copy of the letter out to the Committee.
- A Member confirmed there was no date or address on the letter so the Committee were unable to confirm if the letter was real or not.
- A Member stressed to Mr Jamshidi that it was his responsibility as the driver and suggested if his licence is continued that he should take a driving assessment.
- When asked, Mr Jamshidi confirmed that he was called to collect the passenger at 8.30pm in Preston, the customer took 45 minutes to come out.
- Members stated again that they could not understand what the hurry was to get back at that time of night.

In summing up Mr Jamshidi apologised for his actions and said he would not repeat this. He needed his licence as he has a family and bills to pay and would not make anymore mistakes.

Upon a vote it was (8 for, 2 against)

RESOLVED that Mr Jamshidi's Hackney Carriage driver's licence be continue but that he be required to successfully undertake, at his own expense, a road safety unit driver assessment within three months of today's date and produce a driver assessment pass certificate to the licensing section.

10. STREET TRADING APPLICATION

Amelia Byres, Senior Licensing Officer introduced the report as circulated with the agenda. An application had been received from Gill Morris on behalf of Cheltenham Borough Council to relocate the Farmers' Markets and a separate application to relocate the Arts and Crafts Markets to the pedestrianised area of the Promenade outside Cavendish House.

Both Markets are run and operated by Grenchurch Markets Ltd, Mr Cotton was in attendance at the Committee to speak in support of the application.

The Farmers Market would move back to its existing position of the long gardens during the end of November and December to ensure that the area of the Promenade outside Cavendish House is kept clear for the Christmas market.

Members asked the following Officer questions:

- When asked, Amelia Byres confirmed that generators have been in use and will continue to do so until the electricity supply is up and running sometime next year. The market has worked closely with Environmental Health during the time the farmers market has been relocated, due to redesigning works, to the Promenade. No complaints had been received during this time and Environmental Health and Mr Cotton are very happy with how things have been going.
- When asked, Amelia Byres confirmed the Farmers Market will relocate back to the long gardens when the Christmas Market is here. The other

local markets such as the Continental Market will be sited as normal in the long gardens.

- When asked, Amelia Byres confirmed the application is applied for by Cheltenham Borough Council but Mr Cotton of Grenchurch Markets Ltd provides the market. A separate application has been made for the Arts and Crafts Markets.
- A Member referred to the Waste and Recycling Managers concerns shown in page 38 of the report. The Member asked if these issues have now been addressed and the Licensing Officer was satisfied with the situation.
- Amelia Byres confirmed that all the comments had been addressed and contact would be made every 6 months with the Waste and Recycling Manager to ensure everything is running smoothly. Amelia Byres confirmed that the Fire Service had been contacted about the application and they were happy.

Mr Cotton spoke in support of the application. He said since the Farmers Market has moved members of the public have commented on what a better location the market is in and customers are very happy. The Farmers Market must be brought to the pedestrianised area.

Members had two options to vote on as follows:

1. The application be approved because Members are satisfied that the location is suitable, or
2. The application be refused because it does not comply with the provision of the Street Scene policy as the proposed locations(s) are deemed unsuitable.

Upon a vote it was unanimously

RESOLVED that the application be approved because Members are satisfied that the location is suitable.

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

None

12. DATE OF NEXT MEETING

4 October 2013

Garth Barnes
Chairman

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Cheltenham Borough Council

Licensing Committee – 4th October 2013

Review of a Hackney Carriage Driver’s Licence

Mr Paul Anthony Spicer - HCD066

Report of the Senior Licensing Officer

1. Executive Summary and Recommendation

- 1.1 Mr Paul Spicer holds Hackney Carriage driver’s licence HCD066 which is due for renewal on 30 June 2015.
- 1.2 Mr Spicer has convictions on his DVLA driving licence. The details of these are contained in the enclosed background papers.
- 1.3 In light of this the Public Protection Manager has taken the view that Members of Committee should be aware of the convictions because of:

- 1.3.1 The nature of the offence; and,
- 1.3.2 The need to ensure that Mr Spicer is judged to be a fit and proper person to hold a Hackney Carriage driver’s licence.

1.4 The Committee is recommended to resolve that:

- 1.4.1 **Mr Spicer’s Hackney Carriage driver’s licence be continued with no further action, because the Committee is satisfied that Mr Spicer is a fit and proper person to hold such a licence; or**
- 1.4.2 **Mr Spicer’s Hackney Carriage driver’s licence be revoked as the Committee considers Mr Spicer not to be a fit and proper person to hold a Hackney Carriage driver’s licence.**

1.5 Implications

- 1.5.1 Financial **Contact officer: Sarah Didcote**
E-mail: sarah.didcote@cheltenham.gov.uk
Tel no: 01242 264125
- 1.5.2 Legal There is a right of appeal against a decision to revoke 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).

- 2.2 Under the Rehabilitation of Offenders Act 1974 (Exceptions)(Amendment) Order 2002 (SI2002/441) hackney carriage and private hire drivers are exempted from the provisions of the Rehabilitation of Offenders Act 1974 and convictions are never spent.

The question for the committee is therefore whether, given the nature of the convictions, the applicant is a fit and proper person to hold a licence.

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 Cheltenham Borough Council's policy on the relevance of convictions relates to the Council's assessment of the suitability of an applicant for licensing as a driver of taxis and/or private hire vehicles in terms of their criminal and driving records. Specifically, it is to be applied where an applicant for a driver's licence has received a relevant conviction, caution or fixed penalty.
- 3.3 Each case will be decided on its own merits. Although an applicant may have convictions that would fall under the guidelines in this policy, the Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.
- 3.4 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.
- 3.5 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.
- 3.6 **Major Traffic Offences**

An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

4. Licensing Comments

- 4.1 Members will note that Mr Spicer has been a licensed Hackney Carriage driver in Cheltenham since making his original application in July 2011. At that time Mr Spicer's application was referred to the Licensing Committee for determination because Mr Spicer had a number of old convictions as well as 3 current points on his DVLA driving licence. On that occasion the Committee determined to grant Mr Spicer a 1 year driver's licence, which he subsequently renewed a year later. He now has a 3 year driving licence.
- 4.2 Since the Licensing Committee determined to grant Mr Spicer's Hackney Carriage driver's licence in July 2011, the Licensing Section have not received any complaints regarding Mr Spicer's driving ability.
- 4.3 If Members are minded to allow Mr Spicer's licence to continue, they have the option of adding a requirement that Mr Spicer must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision.

- 4.4 Mr Spicer 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.
- 4.5 The Committee must be satisfied that Mr Spicer 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.

Background Papers**Service Records****Report Author****Contact officer:** Mr Philip Cooper**E-mail:** licensing@cheltenham.gov.uk**Tel no:** 01242 775200

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